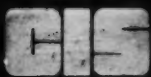


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PALAU COMPACT OF FREE ASSOCIATION IMPLEMENTATION ACT

HEARING BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE ONE HUNDRED FIRST CONGRESS

FIRST SESSION

H.J. Res. 175

**TO AUTHORIZE ENTRY INTO FORCE OF THE COMPACT OF FREE ASSO-
CIATION BETWEEN THE UNITED STATES AND THE GOVERNMENT OF
PALAU, AND FOR OTHER PURPOSES**

SEPTEMBER 26, 1989



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PALAU COMPACT OF FREE ASSOCIATION IMPLEMENTATION ACT

TUESDAY, SEPTEMBER 26, 1989

**U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.**

The committee met, pursuant to notice, at 9:30 a.m., in room SD-366, Dirksen Senate Office Building, Hon. J. Bennett Johnston, chairman, presiding.

OPENING STATEMENT OF HON. J. BENNETT JOHNSTON, U.S. SENATOR FROM LOUISIANA

The CHAIRMAN. Good morning. Nearly 3 years ago, Congress approved the Compact of Association between the United States and Palau under Public Law 99-658. Today the committee will consider legislation, H.J. Res. 175, to authorize entry into force of that compact.

Last year, on October 22, the House and Senate reached a compromise on legislation to authorize the implementation of the compact. Unfortunately, the House failed to pass the compromise before adjournment.

This year, on May 26, the administration concluded an agreement with Palau, which responds to many of the provisions of last year's compromise. The resolution now before the committee is based upon the October 22 House/Senate compromise. But it includes four additional provisions.

First, inclusion of the new May 26, agreement, under section 101 of the Compact Act; 2d, an authorization regarding the Puerto Rican status referendum; 3d, an amendment on anti-drug funding allocations; and 4th, an authorization for prison construction in the Virgin Islands.

The purpose of the hearing today is to receive the administration's views on this resolution, particularly the legal effect of the new agreement referenced under section 209.

This agreement appears to modify the compact regarding U.S. defense rights, and it appears to contradict certain provisions of the House/Senate compromise.

Your full statements will be made a part of the record. If each of you would briefly summarize them, then we can turn to the statements.

Ms. Guerra, I see, is not here yet.

Mr. Yellman, please proceed.

[The text of H.J. Res. 175 and executive views of the Department of State follow:]

101ST CONGRESS
1ST SESSION

H. J. RES. 175

IN THE SENATE OF THE UNITED STATES

JULY 11 (legislative day, JANUARY 3), 1989

Received; read twice and referred to the Committee on Energy and Natural
Resources

JOINT RESOLUTION

To authorize entry into force of the Compact of Free Association between the United States and the Government of Palau, and for other purposes.

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled,*

3 TITLE I—IMPLEMENTATION OF COMPACT OF

4 FREE ASSOCIATION WITH PALAU

5 SEC. 101. SHORT TITLE.

6 This title may be cited as the "Palau Compact of Free
7 Association Implementation Act".

1 SEC. 102. ENTRY INTO FORCE OF COMPACT.

2 Entry into force of the Compact of Free Association
3 between the United States and Palau (set forth in title II of
4 Public Law 99-658 and hereafter in this joint resolution re-
5 ferred to as the "Compact") in accordance with subsections
6 (a) and (d) of section 101 of Public Law 99-658 (100 Stat.
7 3673) is hereby authorized—

8 (1) subject to the condition that the Compact, as
9 approved by the Congress in Public Law 99-658, is
10 approved by the requisite percentage of the votes cast
11 in a referendum conducted pursuant to the Constitution
12 of Palau, and

13 (2) upon expiration of 30 days after the President
14 notifies the Committees on Interior and Insular Affairs
15 and Foreign Affairs of the House of Representatives
16 and the Committee on Energy and Natural Resources
17 of the Senate of the effective date of the Compact.

18 SEC. 103. FISCAL PROCEDURES ASSISTANCE.

19 (a) PROCEDURES ON EXPENDING FUNDS.—Upon re-
20 quest of the Government of Palau, the Secretary of the Inte-
21 rior shall provide assistance to the Government of Palau to
22 develop and promulgate regulations for the effective expendi-
23 ture of funds received pursuant to this joint resolution, Public
24 Laws 99-658 and 99-239, or any other Act of Congress.

25 (b) IMPLEMENTATION OF AUDIT RECOMMENDA-
26 TIONS.—

1 (1) The President is authorized to negotiate an
2 agreement with the Government of Palau under which
3 the Government of Palau agrees to develop a plan
4 within 120 days after an audit is submitted to that
5 Government (or any entity or instrumentality thereof)
6 by the Comptroller General of the United States (or
7 his duly authorized representatives), or the Inspector
8 General of the Department of the Interior, to—

9 (A) implement the recommendations made by
10 such audit, or

11 (B) inform the Secretary of the Interior of
12 that government's objections to implementing
13 such recommendations.

14 (2) Under such agreement the President may
15 agree that the Secretary of the Interior shall provide
16 assistance to the Government of Palau to implement
17 such audit recommendations.

18 SEC. 104. ANTIDRUG PROGRAM.

19 (a) PLAN.—The National Drug Policy Board shall de-
20 velop, in cooperation with the Government of Palau, a plan
21 for an antidrug program in Palau. The plan shall be submit-
22 ted to the Committees on Interior and Insular Affairs, For-
23 eign Affairs, and Appropriations of the House of Representa-
24 tives and the Committees on Energy and Natural Resources
25 and Appropriations of the Senate by April 1, 1989. The plan

1 shall identify the specific needs and costs of such an antidrug
2 program. It shall identify all existing resources to be allocat-
3 ed for its implementation by the Government of the United
4 States and the Government of Palau, and it shall recommend
5 priority use for additional resources, assuming such resources
6 are made available.

7 (b) AGREEMENT.—Following completion of the plan,
8 the President and the Government of Palau shall negotiate
9 an agreement to facilitate implementation of the plan. Such
10 agreement may include—

11 (1) that the Government of Palau may request, on
12 a long-term or case-by-case basis, that the officers of
13 United States law enforcement agencies may conduct
14 investigations consistent with implementation of the
15 plan in cooperation with the law enforcement agencies
16 of the Government of Palau;

17 (2) that the Government of Palau or the Govern-
18 ment of the United States may agree to provide specif-
19 ic resources, on a one-time or a multiyear basis, to
20 strengthen the antidrug program; and

21 (3) a specific description of the technical assist-
22 ance, training, and equipment to be provided to Palau
23 by the United States necessary to implement the plan.

24 (c) AUTHORIZATION.—To the extent that funds are not
25 otherwise available to appropriate agencies of the United

1 States to implement any agreement entered into pursuant to
2 this section, there is hereby authorized to be appropriated
3 such sums as may be necessary.

4 **SEC. 105. PUBLIC AUDITOR AND SPECIAL PROSECUTOR.**

5 (a) **AGREEMENT.**—The President shall, upon the formal
6 request of the Government of Palau, negotiate an agreement
7 with the Government of Palau in accordance with section
8 224 of the Compact which may provide that—

9 (1) the Government of the United States agrees to
10 provide the Government of Palau with assistance, sub-
11 ject to appropriation, under section 222 of the Com-
12 pact for maintaining offices of public auditor and spe-
13 cial prosecutor;

14 (2) the Government of Palau agrees to maintain
15 and staff the independent offices of public auditor and
16 special prosecutor established in accordance with the
17 authority of its constitution and laws;

18 (3) the Government of Palau agrees to provide
19 funding levels adequate for the effective operation of
20 each of the offices of public auditor and special pros-
21 ecutor during the period the Compact is in effect in ad-
22 dition to the assistance provided by the Government of
23 the United States pursuant to this subsection;

24 (4) upon request of the government of Palau the
25 President shall provide, on a nonreimbursable basis,

1 appropriate technical assistance to the public auditor or
2 special prosecutor. The assistance provided pursuant to
3 this subsection for the first five years after the effective
4 date of the Compact shall, upon the request of the
5 Government of Palau, and to the extent personnel are
6 available, include (but not be limited to) the full time
7 services of—

8 (A) an auditor or accountant, as determined
9 by the public auditor, for the office of public
10 auditor; and

11 (B) an attorney or investigator, as deter-
12 mined by the special prosecutor, for the office of
13 special prosecutor; and

14 (5) the Government of the United States shall,
15 subject to appropriation, provide the Government of
16 Palau with such sums as are agreed to under this sec-
17 tion, for each of the offices of public auditor and special
18 prosecutor for the first five years after the effective
19 date of the Compact.

20 (b) AUTHORIZATION.—There are authorized to be ap-
21 propriated such sums as are necessary to carry out the pur-
22 poses of this section.

23 **SEC. 106. POWER GENERATION.**

24 Section 104(e) of Public Law 99-658 is amended to
25 read as follows:

1 “(e) Neither the Secretary of the Treasury nor any
2 other officer or agent of the United States shall pay or trans-
3 fer any portion of the sum and amounts payable to the Gov-
4 ernment of Palau pursuant to this joint resolution to any
5 party other than the Government of Palau, except under the
6 procedures established by the Compact and its related agree-
7 ments. No funds appropriated pursuant to the Compact, this
8 Act, or any other Act for grants or other assistance to Palau
9 may be used to satisfy any obligation or expense incurred by
10 Palau prior to November 14, 1986, with respect to any con-
11 tract or debt related to any electrical generating plant or re-
12 lated facilities entered into or incurred by Palau which has
13 not been specifically authorized by Congress in advance,
14 except that the Government of Palau may use any portion of
15 the annual grant under section 211(b) not required to be de-
16 voted to the energy needs of those parts of Palau not served
17 by its central power generating facilities and any portion of
18 the funds under section 212(b) of the Compact for such
19 purpose.”.

20 **SEC. 107. DEVELOPMENT PLAN FOR PALAU.**

21 The President shall negotiate an agreement with the
22 Government of Palau under which the Government of Palau
23 agrees to provide current information regarding the National
24 Development Plan proposed pursuant to section 231 of the
25 Compact and submitted pursuant to section 101(d)(1)(C) of

1 Public Law 99-658, including information adapting the ex-
2 isting plan to the first 5-year period following the effective
3 date of the Compact, and to list all capital infrastructure
4 projects to be financed with United States assistance.

5 **SEC. 108. MEDICAL SYSTEM.**

6 (a) **REPORT.**—The Secretary of the Interior, in coop-
7 eration with the Public Health Service, shall submit a report,
8 including the views of the Government of Palau, to the Com-
9 mittees on Interior and Insular Affairs, Foreign Affairs, and
10 Appropriations of the House of Representatives and the
11 Committees on Energy and Natural Resources and Appro-
12 priations of the Senate by April 1, 1989. The report shall
13 present the range of options, and the cost of such options, for
14 the upgrading of the Koror hospital.

15 (b) **FINANCIAL ASSISTANCE REQUEST.**—The Govern-
16 ment of the United States will sympathetically consider the
17 request of Palau for additional financial assistance to meet
18 the need for medical facility construction based on the report
19 made under this section, and the United States encourages
20 Palauan financial assistance to this project in addition to
21 funds made available by the United States.

22 (c) **AUTHORIZATION.**—There are authorized to be ap-
23 propriated such sums as are necessary to upgrade the Koror
24 hospital.

1 SEC. 109. AUDIT CERTIFICATION.

2 The chief officer of any agency conducting an audit pur-
3 suant to paragraph (1) of sections 102(c) and 103(m) of the
4 Compact of Free Association Act of 1985 (Public Law 99-
5 239) and section 101(d)(1)(C) of Public Law 99-658 shall
6 certify that audit.

7 SEC. 110. ACQUISITION OF DEFENSE SITES.

8 The provisions of title III of the Compact relating to
9 future use by the United States of defense sites in Palau do
10 not restrict the authority of the President of the United
11 States to—

12 (1) request additional funding, subject to appro-
13 priation, related to the use of privately owned land in
14 Palau pursuant to article II of title III of the Compact
15 as may be appropriate in light of actual land use re-
16 quirements, independent appraisals of such privately
17 owned land accepted by both governments, and other
18 appropriate documentation of actual land use costs; and

19 (2) consent to an extension of the time set forth in
20 a subsidiary agreement to such article in which the
21 Government of Palau is required to make such land
22 available to the United States.

23 SEC. 111. CAPITAL IMPROVEMENTS.

24 (a) REPORT.—The Secretary of the Interior, in coop-
25 eration with the Government of Palau, shall submit a report
26 to the Committees on Interior and Insular Affairs, Foreign

1 Affairs, and Appropriations of the House of Representatives
2 and the Committees on Energy and Natural Resources and
3 Appropriations of the Senate by April 1, 1989 on the condi-
4 tion of the Palau prison. The report shall present a range of
5 options for upgrading the prison, including replacement of the
6 facility; the cost of these options; and alternatives for funding
7 these options.

8 (b) FINANCIAL ASSISTANCE REQUEST.—The Govern-
9 ment of the United States will sympathetically consider the
10 request of Palau for additional financial assistance to meet
11 the need for prison construction based on the report made
12 under this section.

13 (c) AUTHORIZATION.—There are authorized to be ap-
14 propriated such sums as are necessary to upgrade the Palau
15 prison.

16 SEC. 112. FEDERAL PROGRAMS COORDINATION PERSONNEL.

17 (a) ASSIGNMENT.—The Secretary of the Interior shall
18 station at least one professional staff person in each of the
19 Offices of the United States Representatives in the Republic
20 of Palau, the Federated States of Micronesia, and the Repub-
21 lic of the Marshall Islands to provide Federal program coordi-
22 nation and technical assistance to such governments as au-
23 thorized under Public Laws 99-239 and 99-658. In meeting
24 the purposes of this section the Secretary shall select quali-

1 fied persons following consultations with the Interagency
2 Group on Freely Associated State Affairs.

3 (b) AUTHORIZATION.—There is authorized to be appro-
4 priated such sums as may be necessary to carry out the pur-
5 poses of this section.

6 SEC. 113. REFERENDUM COSTS.

7 The Secretary of the Interior shall provide such sums as
8 may be necessary for a further referendum on approval of the
9 Compact, if one is required, or other appropriate costs associ-
10 ated with the approval process in Palau. There is authorized
11 to be appropriated not to exceed \$200,000 to carry out the
12 purpose of this section.

13 SEC. 114. AGREEMENTS.

14 (a) APPROVAL.—Pursuant to section 101(d) of Public
15 Law 99-239, the following agreements are approved and
16 shall enter into force in accordance with their terms:

17 (1) "Agreement Between the Government of the
18 United States and the Government of the Republic of
19 the Marshall Islands to Amend the Governmental Rep-
20 resentation Provisions of the Compact of Free Associa-
21 tion Pursuant to section 432 of the Compact" signed
22 on March 18, 1988; and

23 (2) "Agreement Between the Government of the
24 United States and the Government of the Federated
25 States of Micronesia to Amend the Governmental Rep-

1 resentation Provisions of the Compact of Free Associa-
2 tion Pursuant to section 432 of the Compact" signed
3 on March 9, 1988.

4 (b) EFFECTIVE DATE OF CERTAIN AGREEMENTS.—

5 An agreement between the United States and the Govern-
6 ment of the Republic of Palau identical to the agreements
7 referred to in subsection (a) of this section shall take effect
8 upon submission to Congress of such an agreement and entry
9 into force of such an agreement in the manner provided in
10 section 101(d)(5) of Public Law 99-658.

11 (c) EXTENSIONS.—The provisions of article IX, para-
12 graph 5(a) of the Agreement referred to in section 462(e) of
13 the Compact of Free Association as approved by Public Law
14 99-239, and article IX, paragraph 5(a) of the agreement re-
15 ferred to in section 462(f) of the Compact of Free Association
16 for Palau as approved by Public Law 99-658, are extended,
17 in accordance with the terms thereof, until October 1, 1998,
18 unless earlier terminated or further extended by the laws of
19 the United States.

20 SEC. 115. STATUS OF FUNDS.

21 (a) OBLIGATION OF FUNDS.—In any year that funds
22 made available by the United States for that year pursuant to
23 this joint resolution, Public Law 99-658 or Public Law 99-
24 239, or any other Act of Congress are not completely obli-
25 gated by the Government of Palau, the unobligated balances

1 of such funds shall remain available in addition to the funds
2 to be provided in subsequent years.

3 (b) PAYMENT PROCEDURES.—The President is author-
4 ized to negotiate and conclude an agreement, including the
5 obligation of United States funds, with the Government of
6 Palau which shall provide the following:

7 (1) The sum of \$28,000,000, adjusted by section
8 215 of the Compact at the time of its availability to
9 Palau, shall be provided to Palau pursuant to section
10 211(b) of the Compact in fiscal year 1989.

11 (2) Palau shall pay to the United States, on or
12 before the 15th anniversary of the effective date of the
13 Compact, an amount equal to the net economic cost to
14 the United States of making available the section
15 211(b) funds in the manner specified in this subsection
16 rather than as provided in section 211(b).

17 (3) Such economic cost shall reflect the time value
18 of money and be determined using the rate determined
19 for an equivalent loan by the Federal Financing Bank
20 as of the date these funds are advanced, and using an
21 inflation rate consistent with the determinations made
22 under the provisions of section 215 of the Compact.

23 (4) If the Government of Palau has not paid such
24 net economic costs to the United States by the 15th
25 anniversary of the effective date of the Compact, then

1 the United States shall be automatically paid such
2 sums from the fund established under section 211(f) of
3 the Compact.

4 (5) The provision of section 211(b) funds, as ap-
5 propriated by Public Law 99-349 and pursuant to this
6 subsection, shall be in fulfillment of all United States
7 obligations under such section 211(b) of the Compact
8 and shall be subject to section 236 of the Compact.

9 SEC. 116. SUBMISSION OF AGREEMENTS.

10 (a) SUBMISSION.—Any agreement concluded with the
11 Government of Palau pursuant to this joint resolution and
12 any agreement which would amend, change, or terminate
13 any such agreement, or portion thereof, shall be submitted to
14 the Congress and may not take effect until after 30 days after
15 the date on which such agreement is so submitted. An
16 amendment or agreement substituting or in addition to the
17 subsidiary agreement negotiated under section 212(a) of the
18 Compact or its annex shall take effect only when approved by
19 an Act of Congress.

20 (b) EFFECTIVE DATE.—The authority under section
21 102 of this joint resolution for the Compact to enter into
22 force shall not be effective until the agreements set forth in
23 sections 103 and 107 between the Governments of the
24 United States and Palau have been concluded.

1 SEC. 117. TRANSITION FUNDING.

2 Section 104(c) of Public Law 99-658 (100 Stat. 3676)
3 is amended to read as follows:

4 "(c) AUTHORIZATION FOR TRANSITION PURPOSES.—

5 For the purposes of applying section 105(c)(2) of the Com-
6 pact of Free Association Act of 1985 (99 Stat. 1792) to
7 Palau, the terms 'fiscal year 1987', 'fiscal year 1988', and
8 'fiscal year 1989' shall be deemed to be the first, second, and
9 third fiscal years, respectively, beginning after the effective
10 date of the Compact."

11 TITLE II—INSULAR AREAS MATTERS

12 SEC. 201 SHORT TITLE.

13 This title may be cited as the "Omnibus Insular Areas
14 Act".

15 SEC. 202. JUDICIAL ASSISTANCE.

16 (a) IN GENERAL.—The Ninth Judicial Circuit of the
17 United States may provide assistance to the courts of the
18 freely associated states. The Chief Justice of the United
19 States or the Chief Judge of the Ninth Circuit may, upon the
20 request of a duly authorized official of a freely associated
21 state, authorize any circuit judge of, or district court judge
22 within, the Ninth Circuit to serve temporarily as a judge of
23 any court of a freely associated state.

24 (b) CONSENT.—The Congress hereby consents to the
25 acceptance and retention of reimbursement or allowances for
26 expenses related to service on a freely associated state court

1 authorized by this section. All such reimbursement or allow-
2 ances shall be reported by the judge concerned to the Admin-
3 istrative Office of the United States Courts.

4 (c) ADDITIONAL AGREEMENTS.—The President is au-
5 thorized to enter into agreements with the freely associated
6 states that are necessary or appropriate to facilitate imple-
7 mentation of this section.

8 SEC. 203. CONTROLLED SUBSTANCES IN THE FREELY ASSOCI-
9 ATED STATES.

10 (a) IN GENERAL.—The President is authorized to nego-
11 tiate agreements which provide—

12 (1) that the United States shall carry out the pro-
13 visions of part C of the Controlled Substances Act (21
14 U.S.C. 821 et seq.) as necessary to provide for the
15 lawful distribution of controlled substances in the freely
16 associated states; and

17 (2) that a freely associated state which institutes
18 and maintains a voluntary system to report annual esti-
19 mates of narcotics needs to the International Narcotics
20 Control Board, and which imposes controls on imports
21 of narcotic drugs consistent with the Single Convention
22 on Narcotic Drugs, 1961, shall be eligible for exports
23 of narcotic drugs from the United States in the same
24 manner as a country meeting the requirements of sub-

1 section (a) of section 1003 of the Controlled Sub-
2 stances Act (21 U.S.C. 953).

3 (b) **EFFECTIVE DATE.**—Agreements concluded pursu-
4 ant to this section shall become effective pursuant to section
5 101(f)(5) of Public Law 99-239 or section 101(d)(5) of Public
6 Law 99-658, as may be applicable.

7 **SEC. 204. NORTHERN MARIANAS COLLEGE.**

8 The Northern Marianas College is hereby constituted a
9 depository to receive Government publications, and the Su-
10 perintendent of Documents shall supply to the Northern Mar-
11 ianas College one copy of each such publication in the same
12 form as supplied to other designated depositories.

13 **SEC. 205. MATCHING FUND REQUIREMENT.**

14 The last sentence of section 501(d) of Public Law 95-
15 134, as amended by Public Law 96-205, as amended (48
16 U.S.C. 1469a(d)), is amended—

17 (1) by inserting “any Federal program as it ap-
18 plies in” before “American Samoa”; and

19 (2) by inserting “or other expenditures” after
20 “funds”.

21 **SEC. 206. VIRGIN ISLANDS.**

22 The Revised Organic Act of the Virgin Islands is
23 amended by striking out the second sentence of section 25
24 (48 U.S.C. 1615).

1 **SEC. 207. CABRAS ISLAND.**

2 Section 818(b)(2) of Public Law 96-418 (94 Stat. 1782)
3 (as amended by section 504 of Public Law 98-454 (98 Stat.
4 1736)) is amended by striking "30 percent" and inserting
5 "50 percent".

6 **SEC. 208. PONAPE HYDROPOWER DIVERSION.**

7 Section 2 of the Act of June 30, 1954 (68 Stat. 330), as
8 amended, is amended by inserting "for design and construc-
9 tion of the Nanpil River hydropower diversion project;" after
10 "Ponape;".

11 **SEC. 209. SPECIAL PROGRAMS AGREEMENT.**

12 Section 101(c)(2)(D) of Public Law 99-658 (100 Stat.
13 3673) is amended—

14 (1) by striking "and" at the end of clause (v);

15 (2) by striking the period at the end of clause (vi)
16 and inserting "; and"; and

17 (3) by adding at the end thereof the following:

18 " (vii) the agreement entitled 'Agreement
19 Concerning Special Programs related to the Entry
20 into Force of the Compact of Free Association
21 Between the Government of the United States
22 and the Government of the Republic of Palau',
23 signed on May 26, 1989."

24 **SEC. 210. POLITICAL STATUS OF PUERTO RICO.**

25 (a) **GRANTS TO POLITICAL PARTIES.**—There is hereby
26 authorized to be appropriated to the President for grants to

1 the Popular Democratic Party, the New Progressive Party,
2 and the Puerto Rican Independence Party of the Common-
3 wealth of Puerto Rico \$1,500,000, which is authorized to
4 remain available until the sine die adjournment of the One
5 Hundred First Congress. Grants shall be made to each such
6 party in equal amounts, not to exceed \$500,000 each. Such
7 funds shall be made available for necessary expenses incurred
8 after March 1, 1989, to each such party to participate in the
9 legislative process involving the future political status of
10 Puerto Rico, including the travel and transportation of per-
11 sons, services as authorized by section 3109 of title 5, United
12 States Code, communications, utilities, printing and repro-
13 duction, and supplies and materials and other related serv-
14 ices, and for administrative costs.

15 (b) AUDITS.—Under such regulations as the Comptrol-
16 ler General of the United States may prescribe, the Comp-
17 troller General shall perform a financial audit of the financial
18 transactions made by each such party with such funds.

19 (c) PROHIBITION OF USE OF FUNDS.—Such funds may
20 not be used directly or indirectly to finance the campaign of
21 candidates for public office.

1 SEC. 211. CLARIFICATION WITH RESPECT TO ALLOTMENTS
2 FOR TERRITORIES.

3 Section 1912A(c) of the Public Health Service Act, as
4 added by section 2022(b) of the Anti-Drug Abuse Act of
5 1988 (Public Law 100-690), is amended to read as follows:

6 “(c)(1) Subject to paragraph (2), the allotment under
7 this subpart for a territory of the United States shall be the
8 product of—

9 “(A) an amount equal to the amounts reserved
10 under paragraph (3); and

11 “(B) a percentage equal to the quotient of—

12 “(i) the population of the territory, as indi-
13 cated by the most recently available data; divided
14 by

15 “(ii) the aggregate population of the territo-
16 ries of the United States, as indicated by such
17 data.

18 “(2) Each territory of the United States shall receive a
19 minimum allotment under this subpart of the greater of—

20 “(A) \$100,000; and

21 “(B) an amount equal to 105 percent of the sum
22 of—

23 “(i) the amount the territory received under
24 section 1913 for fiscal year 1988 (as such section
25 was in effect for such fiscal year); and

1 “(ii) the amount the territory received under
2 part C for fiscal year 1988 (as such part was in
3 effect for such fiscal year).

4 “(3) The Secretary shall reserve for the territories of the
5 United States 1.5 percent of the amounts appropriated pursu-
6 ant to section 1911 for allotments under this subpart for each
7 fiscal year.”.

8 SEC. 212. VIRGIN ISLANDS PRISON EXPANSION AND RENOVA-
9 TION.

10 There is authorized to be appropriated \$5,000,000 to
11 the Secretary of the Interior for construction of a 127-bed
12 prison barracks at the Golden Grove Prison on St. Croix,
13 United States Virgin Islands, and for renovation of and im-
14 provements to existing prison facilities.

 Passed the House of Representatives June 27, 1989.

Attest:

DONNALD K. ANDERSON,

Clerk.



United States Department of State

Washington, D.C. 20520

1989 SEP 14 11:10

Dear Mr. Chairman:

This letter is written to provide the views of the Department of State on H.J. Res. 175, a bill to authorize entry into force of the Compact of Free Association between the United States and the Government of Palau, and for other purposes.

As expressed in my letter of March 31, 1989 to Chairman Morris K. Udall of the House Committee on Interior and Insular Affairs, the Department supports the earliest possible enactment of legislation to authorize entry into force of the Compact with Palau. Title I of this bill will enable the United States and Palau to implement the Compact and its related agreements, including the most recent Compact subsidiary agreement signed at Guam on May 26, 1989, promptly upon completion of Palau's internal approval process.

Section 102 of the bill recognizes that the Compact must be approved by the Palauan people in a referendum conducted in accordance with such constitutional procedures as the Palauan government may choose to employ. This section also enables the President to agree to an effective date and implement the Compact 30 days after notifying relevant Committees of the Senate and House of Representatives of such effective date. These provisions are based upon proposals made by the Department, and are fully acceptable.

Similarly, we support the fiscal and audit procedures contained in Section 103. Provisions for a Palauan anti-drug program contained in Section 104 are consistent with the Administration's policy to step up the fight against illicit narcotics. We note, however, that the April 1, 1989 date for submission of an anti-drug plan has passed, and that the National Drug Policy Board, which no longer exists, has been replaced by the Office of National Drug Control Policy. We recommend that Section 104 be amended to provide that the Government of Palau draft an anti-drug plan consistent with the U.S. national drug control strategy, in consultation with the relevant U.S. Government agencies. The development of a rational, effective anti-drug plan is a task that will require careful evaluation of Palau's needs, and may take several months to complete.

The Honorable

J. Bennett Johnston, Chairman,
Committee on Energy and Natural Resources,
United States Senate.

The Department agrees that, subject to appropriation, provision of assistance to Palau for the support of offices of a public auditor and special prosecutor would provide a useful additional dimension to Compact assistance. We therefore support Section 105 of the bill. Section 106, together with Section 115(b), would allow Palau to liquidate the accumulated debt for its new power plant through agreement with its creditors, thus averting a potentially serious threat to Palau's international credit standing. We support this solution as a means to permit Palau to embark on its new status free of the burden of this past debt.

Section 107 provides for updating the 5-year National Development Plan for Palau to coincide with the five year period following the effective date of the Compact, and is consistent with obligations previously assumed by the two governments already in free association with the United States. The Department supports the provision of assistance to Palau for upgrading its medical facilities, subject to appropriation and upon the recommendation of the Secretary of the Interior and the Public Health Service, as provided in Section 108.

We fully concur with the audit certification procedures provided in Section 109. With respect to Section 110, the Department wishes to clarify that U.S. rights to acquire and utilize defense sites in Palau continue to be protected under this legislation, and by the agreement signed by the United States and Palau on May 26, 1989. Under provisions of that agreement, the governments will agree to additional payments for private lands utilized as defense sites, and provision is made for settlement of any disputes which might arise in this connection. The Department reaffirms that the United States has no present intention to utilize any public or private lands in Palau for defense activities.

Subject to appropriation, and in accordance with the report to be prepared by the Secretary of the Interior in cooperation with the Government of Palau on the condition of the Palau prison, the Department supports the provision of funds to upgrade prison facilities, authorized under Section 111. The Department also supports the assignment by the Secretary of the Interior of professional staff persons to each of the U.S. Offices in the freely associated states, as provided in Section 112. Pursuant to legislation, these offices have recently been elevated to the status of embassies. Provision of funds to carry out a further referendum in Palau on the Compact, contained in Section 113, is necessary and appropriate.

Section 114 approves an upgrade of diplomatic relations between the United States and Palau, upon entry into force of the Compact and the completion of required agreements and procedures. A separate bill upgrading relations with the states already in free association with the United States, H.R. 2214, passed both houses of

Congress and was signed into law by the President on July 26, 1989. The exchanges of diplomatic notes required to make the upgrade fully effective are now underway.

The Department also supports Section 114(c), extending the provision, which would otherwise expire, of essential air services to the freely associated states. We support the obligation and payment procedures contained in Section 115 of the bill, which are essential to permit resolution of Palau's outstanding power plant debt, although we note that it no longer appears possible to provide funding for liquidation of this debt during fiscal year 1989.

With respect to Section 116, the Department notes and agrees with the requirements for Congressional oversight contained in Section 116(a), and the requirement for submission of agreements set forth in Sections 103 and 107, as specified in Section 116(b). We also concur in Section 117, the amendment of Section 104(c) of the Palau Compact, to reflect accurately the designation of fiscal years during the 3-year transition period.

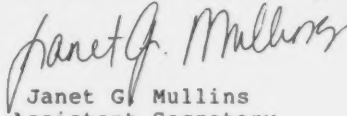
With respect to Title II of H.J. Res. 175, the Department of State defers comment on most of its Sections to the Department of the Interior, with the exception of Section 203. This Section would make it possible for the freely associated states to continue to receive regular shipments of controlled substances for medical use from the United States, pending the adherence of the freely associated states to the Single Convention on Narcotic Drugs. The adherence of the freely associated states to the Single Convention is currently under consideration by those governments. Meanwhile, shortages of controlled drugs can cause great human suffering at hospitals in the freely associated states. The Department therefore strongly supports this provision.

The Department believes that H.J. Res. 175 fully addresses the commitments undertaken by the United States in the subsidiary agreement signed on May 26, 1989. We also believe that it builds a firm foundation for the future relations between Palau and the United States. With respect to the floor statements made in the House of Representatives at the time of its passage, we note that the continued provision of Federal programs not contained in the Compact would be subject not only to negotiation and mutual agreement, but also to authorization and appropriation. The Department endorses the floor statements made by Mr. de Lugo, Mr. Lagomarsino, Mr. Solarz and others regarding the need to implement the Compact before making further adjustments to its terms. We wish to emphasize that no attempt to bring the Compact into effect will be made by the United States until the Palauan people have clearly spoken, and their decision is free of any legal challenges. This legislation is the culmination of protracted negotiations that must now draw to a close. We urge its passage, and await the decision of the people of Palau on the Compact in a free and open referendum.

-4-

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

A handwritten signature in cursive script, reading "Janet G. Mullins".

Janet G. Mullins
Assistant Secretary
Legislative Affairs

STATEMENT OF DONALD J. YELLMAN, ACTING DIRECTOR,
OFFICE OF FREELY ASSOCIATED STATE AFFAIRS, DEPART-
MENT OF STATE

Mr. YELLMAN. Thank you, Mr. Chairman.

We have submitted, for the record, our report and of course you have our statement. All I wish to say is that we are at a point where we are very anxious to bring these negotiations to a close firmly and finally, and get this compact implemented and get the new arrangement between Palau and the United States underway.

We think that the lack of the compact is holding Palau back; that Palau's future economic and political development depend on Palau entering a new phase in its relations with the United States. And we are, for that reason, very anxious to move this thing along.

And we have made a lot of very serious efforts over the past year to do so. Some of the results of those efforts are embodied in this legislation and our agreement.

And that is all I have to say, Mr. Chairman.

[The prepared statement of Mr. Yellman follows:]

STATEMENT OF DONALD J. YELLMAN, ACTING DIRECTOR OF THE OFFICE OF
FREELY ASSOCIATED STATE AFFAIRS, UNITED STATES DEPARTMENT OF STATE
BEFORE THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

SEPTEMBER 26, 1989

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear here today on behalf of the Administration and in response to your letter of August 3 to Secretary Baker. I am also pleased to appear with Ms. Stella Guerra, Assistant Secretary of Interior for Territorial and International Affairs, and Mr. Philip Barringer, Director of Foreign Military Rights Affairs of International Security Affairs of the Department of Defense.

The Department's comments on Title I of House Joint Resolution 175, which deals specifically with the Palau Compact of Free Association, are contained in a report from Assistant Secretary for Legislative Affairs Janet G. Mullins to Chairman Johnston, which has already been provided to the Committee. I will therefore not repeat section by section comments on the legislation here. I do wish, however, to reaffirm the Department's support for this bill to authorize entry into force of the Compact of Free Association with Palau, to offer some observations on events that have culminated in this hearing, and to explain why we believe the Compact and its subsidiary agreements offer the best prospect for a mutually satisfactory future relationship between Palau and the United States.

The Compact and its subsidiary agreements are the result of negotiations that have extended over more than ten years. However, it is not the length of the negotiations, but the imagination, thought and patient give and take that are embodied in the Compact and its subsidiary agreements that give them their unique character and value. I would like to record here our special thanks to Mr. James D. Berg, who recently left the Department's Office of Freely Associated State Affairs. Mr. Berg's participation in the Compact negotiations spanned nearly their entire history, and his innovative thinking and spirit of unquenchable optimism are evident in the final documents.

We are convinced beyond any doubt that the Compact of Free Association as negotiated offers a sound basis for Palau's future economic, social and political development. The political autonomy and economic stability offered by the Compact will allow Palau to attract business investment and economic assistance from many new sources, which will in turn generate employment and income. Further delay in implementing the Compact serves only to maintain a trusteeship that is no longer an appropriate basis for the relationship between Palau and the United States, and that neither side desires.

The Government of Palau has passed legislation authorizing a plebiscite on the Compact, although the date has not yet been set. This will be the seventh vote on the Compact, and, we hope, the last. After signature of an additional subsidiary agreement in May of this year, which addresses certain current needs identified by the Government of Palau, the package that is on the table is the best the United States can offer. Passage of this legislation will remove any doubt that the legislative and executive branches of our government are united in this view. Previous plebiscites held in Palau have all resulted in substantial majorities for the Compact, but short of the 75% required under Palau's Constitution. It is clear that the majority of Palau's voters favor the Compact and want to get on with the new relationship, and, while we will continue to respect Palau's constitutional requirements, we hope that the expressed wishes of the majority will now prevail.

Our conviction that the free association is the most workable political status for Palau is reinforced by the three full years experience we have had with two other former parts of the Trust Territory of the Pacific Islands. Our relationships with the Federated States of Micronesia and the Republic of the Marshall Islands are not without occasional problems, as are few relationships between sovereign nations, but we are encouraged by comments from officials of these governments who tell us they are generally pleased with the way things are going. The freely associated states have taken their places as full members of the community of nations, and their international relationships are in constant expansion. Perhaps more importantly, they are in control of their own destinies, and have taken on full responsibility for their successes and failures. We believe that it is clearly time for Palau to do the same, free from the constraints of a trusteeship that is an anachronism in the modern world. While we do not wish to minimize the serious nature of the responsibilities Palau is to undertake, we are fully confident that Palau's leaders have the political maturity to shoulder them.

In closing, I want to offer our thanks to the Members of this Committee and their staffs, who have worked for years with great patience to make the Compact of Free Association with Palau a reality. We hope that these efforts will now be rewarded by a new relationship with Palau that will bring an honorable end to the last Trust Territory in the world.

I will be pleased to answer any questions the Committee might have.

Thank you.

The CHAIRMAN. Thank you very much, Mr. Yellman.

I would like to recognize the attendance of a group of Micronesian diplomats, who are here in Washington, D.C. for the State Department training seminars. We are very pleased to have you here and welcome you to our hearing.

Mr. Barringer.

**STATEMENT OF PHILIP E. BARRINGER, DIRECTOR, FOREIGN
MILITARY RIGHTS AFFAIRS, DEPARTMENT OF DEFENSE**

Mr. BARRINGER. Mr. Chairman, you have my formal statement. I can summarize it very briefly.

We in Defense support approval of the compact as provided for in H.J. Res. 175. We believe it serves U.S. national security interests because, first, it provides for denial of Palauan territory to unfriendly forces for so long as desired by the United States.

Second, it ensures freedom of operation for U.S. nuclear-propelled and U.S. nuclear-armed ships and aircraft in Palauan territorial waters and airspace.

Third, it preserves our policy of neither confirming nor denying the presence or absence of nuclear weapons at a specific location.

Fourth, although we have no present plans to do so, the United States retains the right to establish and use defense sites in Palau, should a need arise in the future. The new subsidiary agreement concluded on May 26 specifically reaffirms U.S. rights to use Airai Airfield and Malakal Harbor. It also authorizes U.S. financial assistance should private land be needed in addition to those two sites. And it provides a mechanism under section 351 of the compact for resolving any disputes which may arise in securing the necessary agreements for such assistance.

Finally, approval of the compact will end the protracted delay over termination of the U.S. trusteeship, and place the U.S.-Palauan relationship on a much more stable long-term basis. It will thus enable the U.S. to exercise fully its responsibilities for the defense of Palau for the 50-year life of the compact.

[The prepared statement of Mr. Barringer follows:]

STATEMENT OF PHILIP E. BARRINGER
DIRECTOR, FOREIGN MILITARY RIGHTS AFFAIRS
DEPARTMENT OF DEFENSE

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

September 26, 1989

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am pleased to appear before you in support of the Compact of Free Association with Palau, as provided for in H.J. Res. 175. In our view, Congressional approval of this Compact, including its latest subsidiary agreements, will enhance United States security interests in the Western Pacific.

Since their inception in 1969, the Department of Defense has participated fully in status negotiations with Micronesia, including Palau. In our view, the proposed Compact, together with its subsidiary agreements, including the subsidiary agreement of May 26, 1989 concerning Special Programs Relating to the Entry into Force of the Compact, meets our defense needs. The Compact provides for:

- Denial of use of Palauan territory by unfriendly military forces, under Sections 311 and 453.
- Establishment and use of defense sites by the United States, under Sections 321 and 322, together with the accompanying Military Use and Operating Rights Agreement and its annexes, and the subsidiary agreement of May 26, 1989.
- Operation of US nuclear-propelled and nuclear-armed ships and aircraft in Palauan territory under Section 324, which also preserves our important policy of neither confirming nor denying the presence or absence of nuclear weapons at a specific location.

The ability of the U.S. to deny utilization of the land, harbors, and territorial seas of Palau to possible adversaries is of major strategic significance. In view of Palau's location, and the continuing effort by the Soviet Union to enhance its own military and other interests in the Pacific, our right of denial, which may be modified only by mutual agreement, is a significant strategic asset.

Under the subsidiary Military Use and Operating Rights Agreement concluded pursuant to Sections 321 and 322 of the Compact, the U.S. has reserved an option to acquire and use certain potentially valuable defense areas -- Malakal Harbor and two airfields, Airai and Anguar. In addition, we have options for use of undesignated areas for logistic support activities and periodic training and maneuvers. All these options endure for the 50-year length of the Compact.

Our ability to meet U.S. defense needs continues to be protected under the latest subsidiary Agreement of May 26, 1989. Under that agreement, the U.S. has undertaken a commitment to compensate Palau for any private property that the U.S. may take for defense purposes, except at Malakal Harbor and Airai Airfield. Compensation for the taking of private property is consistent with U.S. practice in other countries, and this new provision is therefore equitable to both parties.

In this connection, I would like to point out that in excluding Airai Airfield and Malakal Harbor from the compensation provisions, Palau reaffirmed its commitment to make them available to the U.S., if requested.

Although there may be some delay in reaching agreement for financial assistance should the U.S. seek private lands pursuant to Section 322(b) of the Compact (sites not specifically identified in the Military Use Agreement), this new agreement establishes a mechanism, pursuant to Section 351 of the Compact, for resolving this issue should an agreement on financial assistance not be concluded within the time frame specified by the U.S. at the time of the initial designation of the private lands for U.S. defense use.

I would like to emphasize that the Department of Defense has no present plans to establish military bases or facilities in Palau. However, it is essential that we retain the right to do so should a need arise in the future. If any contingency for use of Palau does materialize, there would be full consultation with the Government of Palau regarding the exercise of U.S. rights.

Although our defense rights under the Compact will be less extensive than under the present Strategic Trusteeship, where the U.S. has plenary military and security powers, the operation of U.S. nuclear-propelled or nuclear-capable ships and aircraft in Palauan territory is specifically authorized under Section 324 of the Compact. That provision also preserves our important policy to neither confirm nor deny the presence or absence of nuclear weapons on these ships or aircraft when they are operating within

Palauan territory. Section 324 has not been modified since 1986 in order to avoid the 75 percent approval requirement by a Palauan plebiscite and referendum. The nuclear provisions of the Compact as approved by Congress in P.L. 99-658 of November 14, 1986, would therefore enter into force with the Compact itself. Accordingly, the U.S. remains fully capable of carrying out its responsibilities under the general security provisions in Title III of the Compact.

In conclusion, the Compact of Free Association and its subsidiary agreements continue to reflect an equitable and balanced approach to moving forward U.S.-Palauan relations, including security, toward a more mature arrangement. It will meet the security needs of both the U.S. and Palau for the foreseeable future. In addition, a freely associated Palau can only add to the stability of the Western Pacific. We therefore urge the Committee to approve H.J. Res. 175, authorizing entry into force of the Compact of Free Association with Palau, including its supplementary agreement of May 26, 1989.

The CHAIRMAN. Let me say that we understand everyone is for it; particularly, this committee is for the compact. We tried very mightily last year to enact it into law. This year we have made an agreement with the House to bring forward last year's agreement without change. And we are concerned that there are changes in this one.

Now, I am not worried about the jails in the Virgin Islands. I think that we need to do that and we are going to need to do a lot more than the \$5 million. But, for example, section 115(b)(3) of H.J. Res. 175 is quite specific on the formula to be used to determine the economic cost of advancing funds under section 211(b) of the compact.

However, article V, paragraph 3 of the May 26 agreement declares the cost to be precisely \$3 million. Which provision applies, and is this not a contradiction, Mr. Yellman?

Mr. YELLMAN. Mr. Chairman, thank you.

During the course of these negotiations, a number of different formulas were put forth on the table. The United States side had its formula; the Palauan side had its formula. The negotiations went on for several hours. It seemed that the Palauan side could come up with a figure even much lower than \$3 million by using certain formulas.

And these are extremely technical matters, which I am not really competent to comment on. But I understand that the difference revolves around not only the economic cost.

The CHAIRMAN. It is a complicated formula and you do not understand how they came up with the \$3 million, is that fair?

Mr. YELLMAN. I am quite sure, Mr. Chairman, that that \$3 million is a negotiated amount.

The CHAIRMAN. You say you are not sure?

Mr. YELLMAN. I am quite sure it is a negotiated amount.

The CHAIRMAN. But the compact contained a formula; this is at variance, then, with the formula?

Mr. YELLMAN. That is quite correct, Mr. Chairman.

The CHAIRMAN. All right. Do you agree with that, Ms. Guerra?

Ms. GUERRA. On the complication of the formula?

The CHAIRMAN. I understand that you are not involved with the compact.

All right, Mr. Barringer, do you have a view on that?

Mr. BARRINGER. Sir, we have no official view on that issue. We had not been involved in those discussions.

The CHAIRMAN. You see the point is this, that we had an agreement with the House, with respect to this resolution last year.

Senator FORD. Mr. Chairman, can they tell us who was involved in putting it together?

The CHAIRMAN. You are talking about the signed agreement?

Senator FORD. Yes. I mean the formula and who put it together, and then if we have the agreement and it is an agreed amount, something that was put together, I do not understand who was involved in making the agreement, do you?

The CHAIRMAN. I do not quite understand that either. Do you know how it was confected?

Mr. YELLMAN. Yes, sir, Mr. Chairman. It was the director of the Office of Freely Associated State Affairs of the Department of

State, and members of the office, who negotiated this agreement in Guam on May 26th.

The CHAIRMAN. Were they aware that it was inconsistent with the legislation?

Mr. YELLMAN. I think they felt, Mr. Chairman, that that was the best number that could be achieved in the course of these negotiations and that, if the United States side did not develop a solution in this case, that the negotiations would have been held up or would have stopped.

The CHAIRMAN. Well, as far as we are concerned, the legislation would have to govern. Is there any other part of the side agreement which is inconsistent with the legislation?

Mr. YELLMAN. I believe in the area of defense there may be some.

The CHAIRMAN. How about the defense rights? Article VI of the May 26th agreement includes provisions with respect to U.S. military land use rights. Does this article effectively modify the compact?

Mr. BARRINGER. Yes, sir, it does. Because it provides that agreement needs to be reached between the U.S. and Palau regarding the acquisition of privately-owned land, should we need such land in the future.

The CHAIRMAN. Does not the President already have the authority under the compact to make these modifications? And if so, why is section 110 of this resolution necessary?

Mr. BARRINGER. Well, sir, it is obviously a modification of the compact, but it seemed to us that if Congress reapproves the compact with those modifications in, then we would have a completed package. And that, as we understand it, is the issue before us now, whether to approve the May 26th agreement and make it part of the compact package.

The CHAIRMAN. Is there anything in the May 26th agreement which is not already covered by existing authorization, either for technical assistance or, in the case of the hospital project, the general 1954 authorization, except the funding advancement for payment of the IPSECO debt?

Mr. YELLMAN. No, there is not, Mr. Chairman.

The CHAIRMAN. The State Department's September 14th letter to the committee states that "no attempt to bring the compact into effect will be made by the United States until the Palauan people have clearly spoken and their decision is free of any legal challenges."

However, on two previous occasions, we have seen approval of the compact by the Palauan people overturned by court challenges, after the administration has moved to implement it.

Do you have any objection to actually including language in this resolution requiring that the approval process be free of any legal challenges?

Mr. YELLMAN. The State Department would have no objection to that, Mr. Chairman.

The CHAIRMAN. Ms. Guerra.

Ms. GUERRA. The Department of the Interior would not have any objections.

Mr. BARRINGER. We would agree, sir, from Defense.

The CHAIRMAN. Would you please work with the government of Palau to develop language to assure that the Palauan approval process will not be invalidated after the contract is implemented?

Mr. YELLMAN. We will, Mr. Chairman.

The CHAIRMAN. Last year's House/Senate compromise included seven omnibus territorial provisions unrelated to the Palau Compact. H.J. Res. 175 would add three more such provisions. A moment ago I mentioned that we have no objection to two of these regarding the anti-drug abuse funding and the Virgin Islands prison expansion.

However, in the year since the compromise was reached, the territorial governors have requested legislation in three minor manners, which might be included in this matter if acceptable to the House.

They are modification of certain funding formulas for certain law enforcement programs of the Justice Department, greater flexibility in the use of Clean Water grants, and a waiver from local taxes for the Office of the Resident Commissioner of the Northern Marianas Islands.

Are you aware of these requests? And if so, does the department support them, Ms. Guerra?

Ms. GUERRA. Mr. Chairman, I have not been made aware of those requests.

The CHAIRMAN. All right. Well, we will give you the information on them, and you might get back with us on that.

Ms. GUERRA. Thank you, sir, I will.

The CHAIRMAN. Senator Ford.

Senator FORD. Mr. Chairman, I have no questions other than the ones that you posed.

I am a little bit concerned about section 210, which does not have anything to do with this particular legislation; it has to do with the authorizing of grants to political parties of Puerto Rico. That will, in my opinion, inject some jeopardy into the passing of this particular bill.

The CHAIRMAN. We would plan to drop that, first of all, because it is not necessary because the money has already been appropriated, and there is no need to put it in anyway. And so we would certainly drop that.

Senator FORD. If that is going to be dropped, then I think that we can move forward if we can find an agreement as it relates to other sections, 209, 211 and 212, from understanding what you have just said, that those things can be worked out.

I think we have played around with this one long enough. We ought to go ahead and get it done.

The CHAIRMAN. I think what we ought to do is just take the original legislation and do away with the referencing of the agreement. There is nothing that would prevent them from having an agreement if it is consistent with the legislation. If it is not consistent with the legislation, then it is not consistent with our deal.

We had a very explicit agreement with the House to go on the legislation last year, and I hope we can do that quickly.

Senator FORD. Section 209, which says that an agreement of the compact, which cannot be amended, changed or terminated except

by an act of Congress, will that also be dropped or will that be a part of the language? That will be dropped also I understand.

The CHAIRMAN. All right.

That is specifically the one we would drop.

Senator FORD. And then there is no need for 210. So I think we ought to go back to the original language and move forward with it. And I have no problems with it.

The CHAIRMAN. Ms. Guerra, we started without you, and I have got to go to another meeting, did you have anything to add?

**STATEMENT OF STELLA GUERRA, ASSISTANT SECRETARY FOR
TERRITORIAL AND INTERNATIONAL AFFAIRS, DEPARTMENT
OF THE INTERIOR**

Ms. GUERRA. No, Mr. Chairman, not at the moment. I think, knowing something about the statements that have been presented by my colleagues, we are very much in agreement with the support for the implementation of the compact.

[The prepared statement of Ms. Guerra follows:]

STATEMENT OF MS. STELLA GUERRA, ASSISTANT SECRETARY OF THE INTERIOR FOR TERRITORIAL AND INTERNATIONAL AFFAIRS, BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, REGARDING H. J. RES. 175, SEPTEMBER 12, 1989.

Mr. Chairman, and members of the Committee, I am pleased to appear before you again -- this time, officially, as Assistant Secretary of the Interior for Territorial and International Affairs. I wish to thank the Committee and individual members for the kindnesses extended to me during the confirmation process. With confirmation behind us, however, we can now get to work on substantive issues affecting the United States insular areas.

Title I -- Provisions Related to the Palau Compact

H. J. Res. 175 appears to be first on the agenda. Title I of the bill deals with implementation of the Palau Compact of Free Association. On May 26, 1989, negotiators concluded an "Agreement Concerning Special Programs Relating to the Entry into Force of the Compact of Free Association between the Government of the United States and the Government of the Republic of Palau." The Administration, including the Department of the Interior, is committed to providing technical assistance and seeking the requisite funding in future years that will fulfill the agreement of May 26, 1989 and implementation of the Palau Compact of Free Association under H. J. Res. 175. We look forward to early implementation of the Palau Compact of Free Association as being in the best interests of both Palau and the United States of America.

As you may know, Palau's Olbiil Era Kelulau (OEK) (the Palau national congress) approved, and President Etpison signed, a bill for a referendum on the Palau Compact of Free Association which includes (in section 3) interpretations of provisions of the Compact and related documentation. Because these interpretations could materially affect your Senate deliberations, a copy of the Palau bill has been provided to the committee. For a detailed discussion of the provisions of Title I and the Palau Compact, I will defer to the representative from the Department of State.

Title II -- Provisions for Other Insular Areas

Title II of the bill, called the "Omnibus Insular Areas Act," contains a number of provisions dealing with a number of the United States insular areas.

Section 202 would authorize the temporary assignment of Federal judges to courts in the freely associated states (FAS), if requested. Legislation similar to the provision of section 202 was enactment in section 1022 of Public Law 100-702 (102 Stat. 4672, 28 U.S.C. 297). Because the section 202 language is slightly different from that enacted in Public Law 100-702, it would be both duplicative and confusing. The Department of the Interior, therefore, opposes the enactment of section 202.

We also support section 203. Our office initiated action with the Drug Enforcement Administration when we first learned that the freely associated states were encountering problems. Section 203 is the result of that initiative. The provision would authorize the Federal government to aid the freely associated states in purchasing legal, medicinal drugs. If they intend to purchase such medicinal drugs in foreign countries, the freely associated states would have to comply with standard narcotics reporting and controls requirements. Section 203 is designed to solve the medicinal drug supply problem in the freely associated states. The Department of the Interior, therefore, supports the enactment of section 203.

With regard to section 204, the Department of the Interior supports the Northern Marianas College being named a depository to receive Federal government publications.

Section 205 is intended to clarify the matching fund requirements for the territories of American Samoa, Guam, the Virgin Islands and the Northern Mariana Islands contained in section 501(d) of Public Law 95-134, as amended. In its explanation of the provision, the House committee states that the amendment is intended to make section 501(d) apply to projects accomplished by Federal agencies for a particular insular area as well as discretionary funding. Section 205 would harm the territories rather than help them. The territories would likely

find that discretionary Federal projects and discretionary Federal funds would likely dry up. For example, if a territory desires the services and expertise of the United States Army Corps of Engineers, they may not be available if funding must come from the Corps budget. Likewise, the territories may find themselves locked out of programs with discretionary funding because administrators may prefer to make their agencies' dollars go farther with a match. This issue is of particular concern to the Office of Territorial and International Affairs. In our technical assistance and maintenance assistance programs, we often require matching funds as a sign of level of commitment and priority placed on the project by the local government. The technical assistance match is usually nominal, TIA often contributes all the cash. Without the match, however, it is extremely difficult to determine the degree to which an insular government desires a particular project. The matching requirement does not "save" money for the Federal government, but rather helps to insure equitable distribution among the territories of scarce technical assistance funds. With regard to the new maintenance assistance program, a matching commitment is considered an absolute prerequisite for the success of the program and protection of hundreds of millions of dollars invested by the Federal government in the islands' capital infrastructure. The Department of the Interior, therefore, is strongly opposed to the enactment of section 205.

We support section 206, which would allow the Federal District Court for the Virgin Islands to sit elsewhere in St. Croix besides Christiansted.

Section 207 would amend existing law to increase from 30 percent to 50 percent the amount of proceeds from the sale or lease of Cabras port facilities Guam may utilize for port development on the Cabras island. The Department of the Interior supports the section 207 change as an appropriate means for encouraging development of Cabras Island as a port facility.

Section 208 would amend the Trust Territory authorization to allow the expenditure of Federal funds for design and construction of the Nanpil River hydropower diversion project. We cannot support the funding of projects outside the agreed amounts contained in the Compact of Free Association. The Compact specifically provides that 40 percent of Compact section 211 funds shall be set aside for capital account projects such as the Nanpil project. The Department of the Interior, therefore, opposes enactment of section 208.

Section 209 would add the May 26, 1989 agreement with Palau to the list of Compact agreements that require an act of Congress to amend or terminate them. The Department of the Interior supports section 209.

Section 210 would authorize the appropriation of \$1.5 million for the three major parties in Puerto Rico to participate in the legislative process involving the future political status of Puerto Rico. An appropriation of \$1.5 million for this purpose was included in Public Law 101-45. Because the funds have already been appropriated, an authorization is unnecessary. The Department of the Interior, therefore, opposes the enactment of section 210.

When section 2022(b) of the Anti-Drug Abuse Act of 1988 was enacted, the territories began receiving a reduced amount of money in contrast to what they received under the Alcohol, Mental Health, and Drug Abuse program in 1988 and earlier. Section 211 would ensure that no territory would fall under a minimum amount, which would be the greater of \$100,000 or 105 percent of two programs in effect in 1988. The combatting of drug abuse is a priority of the Administration, including the Department of the Interior. The Department of the Interior, therefore, supports enactment of section 211.

Section 212 would authorize \$5 million for expansion and renovation of the Golden Grove Prison on St. Croix. Correctional facilities in the U. S. Virgin Islands are severely overcrowded. Due to a lack of cell space on St. Thomas, Federal authorities have often been denied use of jail facilities to hold prisoners in transit, including illegal aliens. The St. Croix prison was built for a capacity of 135 inmates, but currently houses over 175. Because of the urgent prison need in the Virgin Islands, the President proposed in his fiscal year 1990 budget the appropriation of \$2 million for added prison facilities and renovation at the Golden Grove complex in St. Croix. Due to a rapidly increasing prison population, like elsewhere in the nation, the Virgin Islands may require additional facilities in the future. We, therefore, support the authorization of \$5 million contained in section 212, but continue to request the appropriation of \$2 million for fiscal year 1990.

Mr. Chairman, if amended as I have outlined, we believe that the provisions of Title II will be both helpful to the United States insular areas and at the same time be consistent with Executive Branch views and budget imperatives. Enactment of Title I, would, after approval by Palau, allow implementation of the Palau Compact of Free Association. Compact implementation is of overriding importance to continuing good relations between Palau and the United States of America.

The CHAIRMAN. Is there anything further from the other witnesses?

[No response.]

The CHAIRMAN. Thank you very much. We will have some further questions in writing for you.

Senator McClure has submitted a series of questions in August, and we would like for those to be answered for the record as well.

Thank you.

[Whereupon, at 9:45 a.m., the hearing was adjourned.]

APPENDIX

RESPONSES TO ADDITIONAL QUESTIONS



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



OCT 20 1989

Honorable J. Bennett Johnston
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D. C. 20210

Dear Mr. Chairman:

After the May 26, 1989 hearing on H. J. Res 175, you requested answers to a number of written questions from both the Departments of the Interior and State. Some of the questions overlapped jurisdictions. I am, therefore, submitting the enclosed answers to all the question addressed to both Interior and State on behalf of the Administration.

Generally, questions 1 through 11 were answered by the Department of the Interior, questions 36 and 44 were answered by the Department of Defense, and the remaining questions, with a few exceptions, were answered by the Department of State.

The Office of Management and Budget has advised that it has no objection to the submission of the enclosed answers from the standpoint of the Administration's program.

Should you require additional information, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stella Guerra".

Stella Guerra
Assistant Secretary
Territorial and International Affairs

ANSWERS TO QUESTIONS SUBMITTED BY THE SENATE COMMITTEE ON ENERGY
AND NATURAL RESOURCES ON SEPTEMBER 26, 1989

QUESTION 1. The recent GAO report on Palau recommended that the Attorney General clarify the authority of U.S. Law Enforcement Officials in Palau, and consider the GAO's view that U.S. officials do have the authority to investigate and make arrests for U.S. laws which apply in Palau.

What is the current status of this issue, and is there a need for Legislative language to resolve it?

ANSWER: Under 31 U.S.C. 720, the Attorney General has until late October 1989 to submit to the Senate Committee on Governmental Affairs and the House committee on Government Operations a written statement on action taken on the recommendation. At present, the Attorney General has prepared no written statement regarding the recommendation.

QUESTION 2. Last October's House-Senate compromise included 7 Omnibus Territorial provisions unrelated to the Palau Compact. H.J. Res. 175 would add three more such provisions. I have no objection to two of these, regarding anti-drug abuse funding and Virgin Islands prison expansion. However, in the year since the compromise was reached, the territorial governors have requested legislation on three minor matters which might be included in this measure -- if acceptable to the House:

- o Modification of the funding formula for certain law enforcement programs of the Justice Department,

- o Greater flexibility in the use of clean water grants, and
- o A waiver from local taxes for the Office of the Resident Commissioner of the Northern Mariana Islands.

Are you aware of these requests, and if so, does the Department support them?

ANSWER: We are aware of the requests, and the Department of the Interior approves of efforts to resolve the underlying issues.

QUESTION: Would you work with the committee staff to develop language to meet these requests?

ANSWER: Committee staff has provided us with language dealing with the law enforcement programs, clean water grants, and waiver of local taxes for the Office of the Resident Commissioner of the Northern Mariana Islands.

With regard to the law enforcement programs, we endorse the following Committee staff language. By omitting Guam from the provision, most of its former funding is restored under the drug and law enforcement provisions. While American Samoa and the Northern Mariana Islands would not be returned to their former funding positions, the new language is consistent with their population differences and would double their present funding under these important drug and law enforcement provisions.

Modification of Drug Formula Grant Allocations to the Islands. -- Section 901(a), Part 1, Title I of the Act of June 19, 1968 (42 U.S.C. 3791(a)) is further amended in paragraph (2) by changing the proviso to read as follows:

"Provided, That for the purpose of section 506(a), American Samoa and the Commonwealth of the Northern Mariana Islands shall be considered as one state and that for these purposes 67 per centum of the amounts allocated shall be allocated to American Samoa, and 33 per centum to the Commonwealth of the Northern Mariana islands."

On the subject of flexibility for clean water grant, the Department of the Interior has no objection to the

enactment of the following language, which, except for the reference to the Trust Territory, is the language presented by the Committee staff.

Section 1. Capitalization Grants.

(a) Upon application by the chief executive the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Virgin Islands, or the Trust Territory of the Pacific Islands (Palau) (or its successor entity), the Administrator of the Environmental Protection Agency is authorized to enter into an agreement with any such chief executive pursuant to which funds authorized under section 607 of the Federal Water Pollution Control Act (33 U.S.C. 1387) for capitalization grants to establish water pollution control revolving funds and allotted to any entity represented by such chief executive under section 604(a) of that Act may be treated and used as though they were authorized as construction grants under section 207 of the Federal Water Pollution Control Act (33 U.S.C. 1287).

(b) Any agreement entered into pursuant to subsection (a) shall include such requirements and conditions as the Administrator may impose, and shall include assurances, satisfactory to the Administrator, that the governmental entity receiving such funds will establish funding mechanisms that reasonably provide sufficient funding for future sewage treatment construction needs of such entity.

With regard to exemption from taxation of the Northern Mariana Islands Washington office, we recommend the following language for accomplishing the task:

Real property owned by the Commonwealth of the Northern Mariana Islands in the capital of the United States and used by the Resident Representative thereof in the discharge of his representative duties under the covenant shall be exempt from assessment and taxation.

QUESTION 3: We understand that Secretary Lujan and you (Assistant Secretary Guerra) were recently in the Virgin Islands and Puerto Rico in the aftermath of Hurricane Hugo. What do you have to report?

ANSWER: When the hurricane damage in the Virgin Islands became known, Secretary Lujan and I (Ms. Guerra)

were hosting the Insular Policy conference in Honolulu, which was attended by numerous Federal officials, including two congressmen and Senate and House committee staff. Upon receiving information on the damage, I immediately sent my Virgin Islands representative to accompany Under Secretary Braken and the OTIA desk officer to the Virgin Islands for damage assessment. A 24-hour hurricane hot line was established at OTIA. As soon as the conference concluded in the afternoon of September 20, Mr. Lujan and I left Honolulu immediately, flew all night to Washington. Upon arrival, I met with congressional personnel to establish lines of communication regarding the Hurricane Hugo situation in the Virgin Islands.

The Secretary and I then travelled to the Virgin Islands and Puerto Rico for a first hand survey of the damage. The devastation on St. Croix was incredible. As of September 26, 1989 --

- Ninety percent of the homes on St Croix were seriously damaged and between 50 and 60 percent of the structures were totally destroyed. Eight thousand people were in shelters;
- Virgin Islands airports were operating;
- The U.S. Navy ships were providing water;
- Power facilities were inoperable, thus affecting communications;
- The St. Croix hospital was closed with the seriously ill or injured evacuated to Puerto Rico; and
- Two major oil spills occurred at the height of the storm at the Hess Oil Refinery and the territorial power plant.

Attached is a copy of the FEMA report outlining Hurricane Hugo damage in the Virgin Islands, Puerto Rico, and South Carolina.

QUESTION:

Is there anything that you propose we include in this legislation that will aid the Virgin Islands?

ANSWER:

On September 29, 1989, President Bush signed the continuing resolution (Public Law 101-100), under which \$1.1 billion was appropriated for the

Federal Emergency Management Agency (FEMA) for aiding victims of Hurricane Hugo. No additional funds need be appropriated at this time.

The Department of the Interior and its Office of Territorial and International Affairs are communicating with all Federal agencies concerned with the St. Croix disaster to ensure that a coordinated economic recovery plan is implemented in such a way as to assist the Government of the Virgin Islands in its herculean hurricane recovery effort. We noted that nearly all wooden structures were blown away. In order to turn adversity into opportunity, we will seek, where feasible, to have Federal funds used in up-graded structures that will have a greater chance of withstanding hurricanes that may strike in the future.

Please be assured that representatives of the Department of the Interior will communicate with your Committee, through appropriate channels, should additional needs, over and above the FEMA funding, be identified. We will also keep Congress apprised of the progress made in the recovery efforts as we coordinate with other Federal agencies.

QUESTION 4: With respect to section 204, is the College of Micronesia a designated depository and if not; would the Administration oppose including the College of Micronesia in this section?

ANSWER: Section 204 would make the Northern Marianas College a depository to receive Federal government publications. The Administration would not oppose the designation of the College of Micronesia as a depository.

QUESTION 5: (a) What is the specific effect of section 205?

ANSWER: Section 205 deals with waiver of matching funds for federal programs. The waiver provision that would be amended has always been unclear and subject to a variety of interpretations in a number of agencies. The section 205 language does not necessarily clarify the waiver provision. From sponsors of the provision, we understand that section 205 is intended to require a waiver of matching requirements in discretionary programs,

including but not limited to our own technical assistance and maintenance assistance programs. The TIA technical assistance program usually includes a token or in-kind match -- TIA often provides all the cash. If an insular area cannot afford matching funds, no matter how minimal, e.g. the Virgin Islands after Hugo, no match will be required. TIA analyzes each technical assistance request on an individual basis. With regard to the TIA maintenance assistance program, the program will fail, repeat fail, without a substantial match from participating insular areas that underlines a substantial policy commitment by the insular areas to maintenance of capital structures. Without such maintenance, many hundreds of millions of dollars worth of Federally-funded capital improvements will suffer unwarranted and early deterioration.

The provision may also contradict earlier provisions in title I of H. J. Res. 175 (Palau hospital funding, special prosecutor, public auditor) and the May 26 agreement. While TIA's technical assistance program would not be affected, the insular areas would likely find that other discretionary funding may dry up because administrators, in their discretion, may direct funds to other jurisdictions where matching funds are available.

QUESTION: (b) Should these changes apply to all territories?

ANSWER: No. We are strongly opposed to enactment of this provision.

QUESTION: (c) S. 712, as reported by this Committee, would include Puerto Rico under this provision if the Commonwealth option were approved. Should these changes apply to Puerto Rico and if so, what would be the effect?

ANSWER: No. Such a provision should not be made applicable to Puerto Rico, either.

QUESTION 6. What would be the effect of section 207?

ANSWER: Section 207 would amend existing law to increase from 30 percent to 50 percent the amount of proceeds from the sale or lease of Cabras port facilities that Guam may utilize for port

development on Cabras island. The Department of the Interior supports enactment of section 207 as a practical way to finance Guam port development.

QUESTION 7. (a) Assuming that the purpose of section 208 is to provide additional funds for the Nanpil project, wouldn't a specific authorization be preferable?

ANSWER: No. The compact of free association provides wide discretion for the funding of projects out of Compact capital grant funds made available through the Department of the Interior. We understand that recently the Federated States of Micronesia (FSM) signed an agreement with the Army Corps of Engineers allowing the Corps to provide certain technical assistance to the FSM on a reimbursable basis. The grant money made available could be applied to perform planning, engineering and design, and construction management services on behalf of Ponape, in accordance with the terms of this agreement.

QUESTION: (b) To the extent that authorization remains available under section 2 of the 1954 Act for grants to the Federated States, isn't that authority limited to present levels due to the termination of the Trusteeship?

ANSWER: According to present law, yes. Nothing, however, would prevent the Congress from amending the Compact approval legislation and the 1954 Act.

QUESTION: (1) If so, shouldn't a new authorization be enacted rather than relying on authorizations directed at the Trust Territory?

ANSWER: No. The Administration believes that the Freely Associated States (FAS) already receive necessary and sufficient funds through their compact. Additional funds, however, may be provided pursuant to section 224 of the compact.

QUESTION 8. (a) The explanation in the House record of section 209 indicates that the intent of the section is to incorporate the May 26 Agreement into the Compact and this legislation. Section 209, however, appears only to provide a limitation on the Executive Branch's ability to amend or modify the Agreement and not to enact the Agreement or alter

its status as an Executive Branch Agreement. What is your interpretation?

ANSWER: The Department of the Interior agrees with your interpretation. Section 209 would provide guidance for the Executive Branch and would limit executive authority to modify the agreement.

QUESTION: (b) The Agreement itself contemplates further discussions and possible agreements. Would section 209 foreclose such agreements or, since they are contemplated specifically, would they not require any approval?

ANSWER: If the May 26 agreement, itself, were to be modified, section 209 would require congressional approval. A separate agreement addressed to the same subjects as the May 26 agreement and superceding it, would probably require congressional approval.

QUESTION: (c) Doesn't the Administration have other authority to enter into Agreements with Palau, such as for law enforcement, which could touch on or affect the provisions of this Agreement without actually having to amend the May 26 Agreement?

ANSWER: Yes. The negotiation of separate agreements would not be precluded. The executive could enter into a wide range of agreements, including law enforcement, without having to amend the May 26, agreement.

QUESTION: (1) Do you view section 209 as foreclosing that authority?

ANSWER: No. We do not.

QUESTION: (d) Is there any legitimate reason for section 209?

ANSWER: No. Not based on our belief that other, separate, subsidiary agreements may be negotiated. The provision, however, may serve some purpose in clarifying congressional intent.

QUESTION 9. Given the action on the Supplemental Appropriations measure, is there any reason for section 210?

ANSWER: No. Public Law 101-45 appropriated \$1.5 million for defraying the political status expenses of the three political parties of Puerto Rico. Section 210, therefore, is unnecessary.

QUESTION 10: (a) What is the purpose of section 211?

ANSWER: The Anti-Drug Abuse Act of 1988 caused reduced funding for drug treatment. Section 211 was intended to ensure that no territory would fall under a minimum amount, which would be the greater of \$100,000 or 105 percent of two programs in effect in 1988. However, this provision is no longer needed in light of the enactment of section 2(a)(3) of Public Law 101-93.

QUESTION: (b) Does the Public Health Service support this provision?

ANSWER: Yes.

QUESTION 11: (a) The Administration has indicated that \$2 million would provide for a 100-bed facility in the Virgin Island. Section 212 proposes \$5 million for a 127-bed facility. Why does it cost \$3 million for an additional 27 beds?

ANSWER: Since Hurricane Hugo visited the Virgin Islands, all estimates of St. Croix prison needs are subject to drastic revision. With regard to your specific question, however, the Virgin Islands estimate of \$5 million was based on a maximum security facility, whereas the \$2 million estimate was based on a barracks type facility similar to the one built in Guam.

QUESTION: (b) What is the need in the Virgin Islands?

ANSWER: In light of Hurricane Hugo, a reassessment of need is necessary, and will be forthcoming in the near future.

- QUESTION: (c) What is the capability of the Virgin Islands government to provide such a facility?

ANSWER: Prior to Hugo, the Virgin Islands was developing a bond issue for general infrastructure needs. The Government of the Virgin Islands seemed quite capable of financing prison improvements over and above Interior's \$2 million proposal. The

aftermath of Hurricane Hugo may call that ability into question.

QUESTION 12. Is there any question that the reference in Section 102(1) to the Constitution of Palau would include any amendments to such Constitution adopted subsequent to the enactment of H.J. Res. 175?

ANSWER: No. The reference in section 102 (1) is to the Constitution of Palau as it now exists or as it may be amended in the future.

QUESTION: (1) Should this be clarified?

ANSWER: It appears clear that the reference is to Palau's internal law, whenever adopted.

QUESTION 13. Should Section 102 be modified to provide specifically for the President to set the effective date?

ANSWER: No. We believe section 102 is sufficiently clear as to the (U.S.) President's authority to set the effective date of the Compact.

QUESTION 14. The Committee was previously assured that prior to setting the effective date with respect to the Republic of the Marshalls and the Federated States of Micronesia of their respective Compacts and termination of the Trusteeship, that the Administration would consult with the Committee. No such consultations occurred. Can we assume the same scenario will apply if H.J. Res. 175 were enacted?

ANSWER: The Committee can be assured that the Administration will consult prior to setting the effective date.

QUESTION 15. Does the notice requirement in section 102(2) require Congress to be in session?

ANSWER: No it does not.

QUESTION 16. Is it clear that the assistance contemplated under section 103(a) is technical assistance which requires appropriation?

ANSWER: Section 103(c) contemplates the use of technical assistance for Palau to develop regulations for the expenditure of U.S. funds. No specific appropriation is necessary to the extent that already-appropriated technical assistance funds are available. Interior has already provided \$30,000 in technical assistance for developing a procurement law for Palau.

QUESTION: (a) Doesn't current law already authorize such assistance?

ANSWER: Yes. We believe you refer to the authorization for DOI technical assistance programs.

QUESTION 17. (a) Does the Administration consider Article V.1. of the May 26, 1989 Subsidiary Agreement to satisfy the requirements of section 103(b) of H.J. Res. 175?

ANSWER: Yes, we believe that it fully satisfies these requirements.

QUESTION: (b) If so, is there any reason to retain section 103(b)?

ANSWER: It serves to clarify the purpose of Article V (1) of the Agreement of May 26, 1989.

QUESTION 18. (a) Does the Administration consider Article III of the Subsidiary Agreement to satisfy the requirements of section 104 of the Resolution?

ANSWER: Yes, we do.

QUESTION: (b) If so, is there any need for the retention of section 104?

ANSWER: While it is not absolutely necessary, it serves to clarify the purpose of Article IV of the Agreement of May 26, 1989.

QUESTION: (c) Is it clear that the enumeration of provisions under section 104(b) is advisory only?

ANSWER: Yes. This enumeration is illustrative of the types of provisions that the agreement may contain.

QUESTION: (d) The subsidiary, in Article III indicates that the U.S. will provide an annual amount not to exceed \$400,000, as provided by the laws of the

United States... What is the legal effect of that section?

ANSWER: That section means that the executive branch will provide the specified funds upon appropriation by the Congress, and that the Administration will seek that appropriation.

QUESTION: (1) Does it create an enforceable right?

ANSWER: No, it does not.

QUESTION: (2) What would be the effect if Congress did not appropriate the full amount?

ANSWER: Palau would receive the amount appropriated.

QUESTION: (3) If the answer to 18(d)(1) was in the affirmative, what is the basis for the administration entering into an agreement committing federal funds in the absence of either authorization or specific appropriations?

ANSWER: The Administration has not made such a commitment.

QUESTION: (4) Are the obligations set forth in Article III subject to any limitations which may be placed either on authorizations or appropriations in Acts providing for the use of such funds?

ANSWER: The agreement Concerning Special Programs Related to the Entry Into Force of the Compact of Free Association does not carry a full faith and credit commitment, and the provision of funds under this Agreement is subject to the laws of the United States.

QUESTION: (5) To what extent would the funding level set forth in Article III be considered as technical assistance and isn't such assistance already authorized?

ANSWER: The nature of the funding is such that it is covered by the authorization for technical assistance. However, the amounts contemplated would be difficult to cover under current technical assistance appropriations.

QUESTION: (e) Is there anything in Article III for which the authorization in section 104(c) is necessary or could the agreement be fully implemented under

existing authorizations by the appropriation of funds in annual appropriation Acts?

ANSWER: No authorization is necessary. The agreement could be fully implemented under existing authorizations by the appropriation of sufficient funds.

QUESTION: (f) Does the Administration plan to include the specified funding in its annual budget request?

ANSWER: The House-passed version of H.J. Res. 175 contemplated the availability to Palau of the \$9.3 million in addition to the funding Palau will otherwise receive pursuant to the terms of the Compact. On the assumption that H.J. Res. 175 is enacted and the Compact can enter into force before the end of fiscal year 1991, the Administration would seek, through pending and future appropriations requests or through funds already appropriated, to make these additional amounts available to Palau starting in the first full year of Compact effectiveness. These funds would be provided in a manner consistent with (1) the reports and recommendations referred to in the Department of State letter of March 31, 1989, (2) the relevant provisions of Compact subsidiary agreements, and, (3) in the case of appropriations requests, in accordance with United States laws.

QUESTION: (1) What would be the effect if such funds were not included?

ANSWER: The Administration fully intends to live up to the terms of the Agreement.

QUESTION: (2) What is the Administration's position if similar requests were made by the Marshall Islands or Guam?

ANSWER: Interior would consider such technical assistance requests within the limits of its available appropriations.

QUESTION: (3) Why should Palau have a more favored status?

ANSWER: The Administration does not believe Palau enjoys a more favored status. Each of the three Compact agreements contains provisions that reflect the unique character and circumstances of each of the present and future freely associated states.

QUESTION 19. (a) Does the Administration view the provisions of Article V of the Subsidiary as satisfying the requirements of section 105 of H.J. Res. 175?

ANSWER: Yes, together with Article IV.

QUESTION: (b) Section 105(a)(1) clearly states that any assistance is subject to appropriation. Is there anything in the Subsidiary or elsewhere which affects that limitation?

ANSWER: Yes. This limitation is also based on the clause ... "in accordance with its law", in Section 222 of the Compact, which was cited in Section 105(a)(1).

QUESTION: (c) What is the legal effect of a failure to appropriate funds as provided in the Subsidiary?

ANSWER: None. The Agreement clearly recognizes that funding is subject to appropriations.

QUESTION: (1) What recourse is there if funds are not appropriated?

ANSWER: Palau might have recourse to the dispute resolution process of the Compact.

QUESTION: (2) How were the amounts determined?

ANSWER: These amounts were determined by the House Interior Committee, not by the Administration. We are not aware of the factors that led the Committee to set them at these levels.

QUESTION: (3) Does the Administration plan to request the annual amounts in the annual budget requests?

ANSWER: See answer to 18(f), on page 13.

QUESTION: (4) What is the effect of failure to make such a request?

ANSWER: The Administration fully intends to live up to the terms of the Agreement.

QUESTION: (d) Assuming the answer to 19(a) is yes, is there any need for section 105?

ANSWER: The section is not absolutely necessary, but it does serve to clarify the purpose of Article V of the Agreement.

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QUESTION: (e) Is it clear that absent section 105, the assistance set forth in the Subsidiary is still subject to appropriations and does not constitute a legally enforceable obligation?

ANSWER: Yes.

QUESTION: (f) The Subsidiary purports to give the U.S. the ability to withhold Compact funds if Palau is found in breach of the provisions of Article IV. Does the Administration believe that it has the ability to withhold appropriated funds from the purposes for which they were appropriated?

ANSWER: The authority of the Executive Branch to withhold Compact funds under six specific sections of the Compact is contained in section 105(g) of P.L. 99-239, which is incorporated by reference into section 102(b) of P.L. 99-658. Article IV of the Agreement of May 26, 1989, does not purport to withhold Compact funds by authority of this section, but rather funds that would be provided under the terms of the Agreement itself, pursuant to Section 224 of the Compact. We note that such withholding would only be considered as a temporary measure to correct performance in accordance with the Agreement. As a legal matter, no executive agreement can authorize the withholding of Compact funds, except in accordance with the authorization contained in Compact section 105(g). The language of the question refers only to the potential sources of funds to implement the provisions of the Agreement of May 26, 1989, and it would be only those funds which would be subject to withholding for noncompliance with the Agreement by Palau.

Although funds for most of the provisions of the Agreement are provided in the fiscal year 1990 appropriation bill, pursuant to either the 1954 Trust Territory authorization or Interior's technical assistance program, the Agreement would provide funding pursuant to section 224 of the Compact. Consequently, they are Compact derived funds, although not Compact funds. There is no intent to affect any funding set forth in the Compact itself, whether based on the full faith and credit of the United States or discretionary appropriations.

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QUESTION: (1) Does this extend to funds guaranteed by the full Faith and Credit of the United States?

ANSWER: Whether or not funds are defined as full faith and credit has no bearing on the right of the executive branch to withhold funds for a material breach of the Compact.

QUESTION: (2) What is the source of authority for the Executive Branch to alter the terms of federal law, including appropriation acts?

ANSWER: Payment of funds could be withheld until mutually agreed terms and conditions are met. Section 105(g) of P.L. 99-239 incorporated by reference into section 102(b) of P.L. 99-658, provides such authority.

QUESTION: (3) To what extent does the Administration believe that by entering into subsequent subsidiary agreements it can alter provisions of federal law?

ANSWER: It cannot, unless those subsidiary agreements are enacted by Congress.

QUESTION: (4) Does the Administration believe that it could waive the provisions for permanent denial through a subsidiary agreement simply by providing that such a waiver is to be considered a remedy for breach of that subsidiary?

ANSWER: No, it does not and it could not.

QUESTION: (5) What is the purpose for extending remedies, and the withholding of funds other than those provided in the Agreement, beyond the terms of the Agreement?

ANSWER: Withholding of funds would be an extreme measure that would only be taken as a result of a serious breach of the Compact. We believe that recourse to such extreme measures would be unlikely.

QUESTION: (6) Please provide the specific language necessary to ensure that the Executive Branch is foreclosed from entering into any subsidiary agreement or taking any action which could effect any alteration in the provisions with respect to denial other than pursuant to a specific Act of Congress.

ANSWER: Section 101(c) of P.L. 99-658 provides that an Act of Congress is required to amend title 3 of the Compact, which contains the denial provision. Accordingly, the executive branch is already constrained from altering the denial provisions, and no additional language is needed.

QUESTION: (7) Please provide in detail the specific funding provisions, other than those set forth in the Compact, which the Administration believes it has the right to withhold based on this Agreement?

ANSWER: All of the funding provisions, other than those set forth in the Compact, could be withheld in the event of a material breach of the Compact or its subsidiary agreements.

QUESTION: (8) With respect (a) to any funds the appropriation of which is discretionary; and (b) to any funds covered by a pledge of full Faith and Credit, please provide an opinion by the Department of Justice as to the ability and specific source of authority for the Executive

Branch to withhold such funds pursuant to this Agreement.

ANSWER: The Department of State will request such an opinion from the Department of Justice.

QUESTION: (9) What are the other "steps it considers appropriate" referred to in Article IV.4.?

ANSWER: The U.S. might consider any of a number of methods to indicate the gravity of the situation. We might also consider withholding discretionary funding, such as technical assistance, or we might combine several actions.

QUESTION: (10) Who makes the determinations on behalf of the Administration?

ANSWER: Senior officials of the Departments comprising the Interagency Group on Freely Associated State Affairs, which oversees implementation of the Compact.

QUESTION: (11) Are such determinations reviewable?

ANSWER: Any decision is reviewable through the dispute resolution procedure.

QUESTION: (12) what is the basis for such review?

ANSWER: Legal and policy considerations.

QUESTION 20. (a) Does the Administration view the effect of section 106 as altering in any fashion the ability of the Government of Palau to use Compact funds for whatever legal obligations may exist with respect to the IPSECO plant absent section 104(e) of P.L. 99-658?

ANSWER: Yes, in the sense that it restricts the funds that may be used for liquidation of the power plant debt to those available under Compact section 211(b) or 212(b).

QUESTION: (b) Is there anything in the provisions of section 106 at variance with the provisions of the Compact as negotiated or the explanation of the Compact terms which may have been provided to any foreign government?

ANSWER: No, there is not, but see question 20(a) above.

- QUESTION: (c) In recent litigation concerning the IPSECO debt, the courts have concluded that the actions of the High Commissioner in suspending provisions of Palauan law were ineffective. Could you comment on that aspect of the court's decision?
- ANSWER: We would prefer not to comment on the decisions of U.S. courts.
- QUESTION: (d) Since the United States was not a party to the litigation, do you believe the Judge's opinion has any legal or binding effect on the United States?
- ANSWER: No. We do not believe that the decision has any legal or binding effect on the United States.
- QUESTION: (e) Did the Department of Justice review that opinion and, if so, what is its opinion on the validity of that or other actions taken by the High Commissioner? If not, please provide an opinion to the Committee.
- ANSWER: We are not aware of any Department of Justice review of that opinion.
- QUESTION 21. (a) Does the Administration believe that the provisions of article V.2. satisfy the requirements of section 107?
- ANSWER: Yes, we do.
- QUESTION: (b) If so, is there any need for section 107?
- ANSWER: It serves to clarify the purpose of Article V.2. of the Agreement of May 26, 1989.
- QUESTION 22. (a) Does the Administration believe that the provisions of Article II.1. and the report submitted earlier this year by the Department of the Interior satisfy the requirements of section 108?
- ANSWER: Yes, we do.
- QUESTION: (b) If so, is there any need to retain section 108?
- ANSWER: It serves to clarify the purpose of Article II (1.) of the Agreement of May 26, 1989.
- QUESTION: (c) Is it clear that any funds provided in appropriation acts for obligation after October 1,

1989 count against the funding in Article II.1.(b) of the Agreement?

ANSWER: Yes, it is clear.

QUESTION: (d) What are the obligations of the U.S. if Palau does not submit a plan as contemplated under Article II.1.(a) or if such a plan is not acceptable?

ANSWER: Hospital funding is contingent upon submission and review of a plan.

QUESTION: (1) What is the role of the appropriate authorizing and appropriating Committees in reviewing the adequacy of such a plan?

ANSWER: The Administration intends to share such plans with appropriate committees of Congress for its views and comments.

QUESTION: (2) What is the legal effect if the Appropriations Committees refuse to provide such funding?

ANSWER: Palau would not receive the money.

QUESTION: (3) Has the Administration requested such funding and if not, when do you plan to make such a request?

ANSWER: Not yet. See answer to question 18(f) on page 13.

QUESTION: (4) What happens if Palau does not submit an acceptable plan prior to FY 1991?

ANSWER: Even if funds are appropriated, the funds would not be released unless a plan were submitted and found to be acceptable.

QUESTION: (5) Does the Administration plan to submit additional funding requests for health care facilities in either the Federated States or the Marshall Islands?

ANSWER: The U.S. has no such requests from the FAS governments and therefore does not plan to seek additional funding.

QUESTION: (e) Doesn't sufficient authorization already exist, absent this section, to provide for

additional assistance to Palau for health care facilities, if justified?

ANSWER: Yes, it does.

QUESTION 23. (a) Does section 110 alter in any manner authority which the President would otherwise have under the Compact?

ANSWER: The section does not alter Presidential authority, but removes any doubt as to its scope.

QUESTION: (b) If not, is there any reason why section 110 should be retained?

ANSWER: It clarifies the President's authority with respect to the acquisition of defense sites.

QUESTION 24. (a) Does the Administration believe that the report submitted earlier this year meets the requirements of section 111?

ANSWER: Yes, we do.

QUESTION: (b) If so, is there any need to retain this section?

ANSWER: Even if the reports satisfy the requirements of section 111, subsections (b) and (c) may serve a useful purpose.

QUESTION: (c) Doesn't sufficient authorization for appropriation already exist to meet any legitimate and justified need of Palau for detention facilities?

ANSWER: Yes, it does.

QUESTION: (d) Has Palau submitted the plan required under Article II.2(a) of the Agreement?

ANSWER: No, it has not.

QUESTION: (e) What is the effect of failure to submit such a plan or if the plan is unacceptable?

ANSWER: Funding would not be released under the terms of the current agreement until an acceptable plan is presented.

- QUESTION: (f) Is it clear that the obligation of the U.S. to provide assistance requires approval by the Appropriations Committees?
- ANSWER: No. Provision of this assistance requires an appropriation act, not Committee approval by itself.
- QUESTION: (g) What happens if both Interior and Justice approve the plan, but the Congress does not agree that the plan justifies the appropriation of additional funds?
- ANSWER: If funds are not appropriated, the project would not be funded.
- QUESTION: (h) What happens if a plan is not submitted prior to effective action on FY 1991 appropriation measures?
- ANSWER: If appropriated, funds would not be released until an acceptable plan is submitted.
- QUESTION: (i) Does the submission of a plan acceptable to the Administration obligate the U.S. to actually appropriate funds?
- ANSWER: No. The only U.S. obligation under the Agreement is for the Administration to seek funding under the normal budget process.
- QUESTION: 25. (a) Doesn't authority for section 112 already exist as well as specific directives in reports accompanying appropriation acts?
- ANSWER: Yes, it does.
- QUESTION: (b) What are the specific plans of the Department of the Interior to comply with this section and the intent of previous legislation, including the use of details from other agencies?
- ANSWER: Secretary Lujan has directed a review of the present organizational structure of OTIA and that consideration be given to placing more personnel in the field. This will include actions to comply with previous directives of the Committee regarding the stationing of personnel in the FAS.
- QUESTION 26. (a) Does the Administration support section 113?

- ANSWER: Section 113 calls for the U.S. to pay the referendum costs. The Department of the Interior would pay such costs, but only if they are within currently available funding.
- QUESTION: (b) Have funds been requested for this purpose?
- ANSWER: Palau has not yet sought funding from the Department of the Interior.
- QUESTION: (c) If not, where does the Administration plan to get such funds and at the expense of what other program?
- ANSWER: Since it is anticipated that the plebiscite will take place during fiscal year 1990, we are committed to providing technical assistance for plebiscite and political education costs, contingent on submission of an approved plan.
- QUESTION 27. (a) Are sections 114(a) and (b) needed any longer?
- ANSWER: No, they are not. The contemplated change in our relations with the Marshall Islands and the Federated States of Micronesia was accomplished by separate legislation.
- QUESTION: (b) Is there any need for subsection (c) of section 114?
- ANSWER: Yes. The continued provision of essential air service to the freely associated states is critical.
- QUESTION 28. (a) Is section 115(a) needed?
- ANSWER: No. It is not needed. See answer to (b) below.
- QUESTION: (b) As a practical matter, won't the terms of the relevant appropriation act control the ability to obligate funds beyond the fiscal year for which the funds are appropriated?
- ANSWER: Yes. Currently, however, all the affected appropriations are designated as "no year" funds, which means that they remain available until obligated and expended.
- QUESTION: (c) Does the Administration believe that the provisions of Article V.3. meet the requirements of section 115(b)?

- ANSWER: Yes, we do. However, the precise net economic cost cannot be determined until future years. If at that time the precise net economic cost is determined to be different from the \$3 million figure, the Administration could support a provision in a future appropriation bill requiring adjustment up or down.
- QUESTION: (1) If so, is there any need for the retention of this section?
- ANSWER: Yes. Legislative authority is also needed to bring about the necessary changes in the funding stream that will permit settlement of the IPSECO debt.
- QUESTION: (d) Given that it is now September 12 and that the Subsidiary Agreement does not become effective until the Compact goes into effect, which cannot occur until at least 30 days after the President notifies the appropriate committees of Congress of the proposed effective date and that Palau must approve the Compact first, how does the Administration plan to provide funds in FY 1989?
- ANSWER: We no longer plan to provide funds in fiscal year 1989.
- QUESTION: (1) By its terms, the authority in section 115(b) is limited to FY 1989. What happens on October 1, 1989?
- ANSWER: The agreement negotiated by the executive branch ties funding to the first year of Compact implementation, not to a specific fiscal year.
- QUESTION: (2) Does the Administration contemplate a reprogramming, and if so, from what funds?
- ANSWER: We do not plan a reprogramming, since first year Compact funding has already been appropriated, contingent on the decision and authority to implement.
- QUESTION: (e) The language of 115(b)(3) is quite specific about the formula to be used to determine the economic cost and the time for such calculation. Please explain how Article V.3.(d) complies with that requirement.
- ANSWER: See answer to question 28(c) on page 23.

QUESTION:

(1) Please provide an explanation and legal opinion from the Federal Financing Bank of why they believe Article V.3.(d) meets the requirements of section 115(b)(3) and the calculations used to arrive at precisely \$3 million.

ANSWER:

The \$3 million figure was negotiated in an attempt to meet the economic cost for the IPSECO settlement, in consideration of the requirements of section 115(b)(3). But, see answer to question 28(c) on page 23.

QUESTION:

(f) Section 115(b)(5) speaks of 211 (b) funds "as appropriated by Public Law 99-349 and pursuant to this subsection." What funds were appropriated by Public Law 99-349 and to the extent that such funds were appropriated, how could they have been appropriated pursuant to this subsection, which is not law?

ANSWER:

Section 211 (b) funds have already been appropriated to be paid at a rate of \$2 million per year for 14 years beginning with the second year of the compact. This bill would authorize that stream to be made available during the first year. No further appropriation would be necessary.

However, in order to make congressional intent absolutely clear, we suggest that the committee consider enactment of the following language:

The sum of \$28 million appropriated by Public Law 99-349 to fulfill the obligations of the United States under section 211(b) of the Compact (approved in Public Law 99-658), adjusted by section 215 of such Compact, shall be provided to Palau during the first fiscal year after the Compact is entered into force.

QUESTION:

(g) To the extent that \$3 million is not the appropriate amount when the Federal Financing Bank makes the appropriate determination under section 115(b)(3) at the time specified in such section (the date on which the funds are actually advanced), won't the provisions of section 115(b)(4) automatically apply notwithstanding the language of Article V.3.(d)?

ANSWER: See answer to question 28(c) on page 23.

QUESTION: (1) If not, please provide an explanation and legal opinion from both the Department of Justice and the Federal Financing Bank of the specific authority for the Executive Branch to alter the precise terms of a statute.

ANSWER: We believe that we have made the effort to achieve the best result in a negotiated provision, but we have not altered the statute.

QUESTION: (h) Section 115(b)(5) requires that the appropriate economic cost be either paid by Palau prior to the 15th anniversary of the compact or that such funds are to be automatically paid from the 211(f) fund. The Agreement does not contain a provision for such automatic payment. Since that provision is a condition precedent for the advancement of funds, why should such an advance be made?

ANSWER: The payment obligations of Palau may be met by a deduction of Compact funds prior to the tenth anniversary of the Compact, or they would constitute a condition on the ownership of the investment fund created under Compact section 211(f). If necessary, the U.S. could recover this amount through court action.

QUESTION: (1) Since the Administration knew of the requirements of section 115(b)(5), why were not those requirements included in the Agreement?

ANSWER: These requirements are incorporated in the subsidiary agreement under Article V(3)(a).

QUESTION: (2) Would the Administration oppose a specific provision being placed in an appropriation act which would withhold sufficient funds from 211(f) to cover the economic cost?

ANSWER: If the precise net economic cost is determined in future years to be different from the \$3 million figure, the Administration could support a provision in a future appropriations bill that would make the proper adjustment: either a withholding or a lesser repayment.

QUESTION: (3) Please provide the specific language necessary to accomplish that objective.

- ANSWER: At the appropriate time in the future, we could provide specific appropriation bill language. We also stand ready to assist the Congress if language of a more general nature is desired at this time.
- QUESTION 29. (a) When does the 30-day period referred to in section 116(a) begin to run?
- ANSWER: The period starts on the day the agreements are submitted to Congress.
- QUESTION: (b) Since the Agreement provides that it will come into effect only with the Compact, isn't this section meaningless?
- ANSWER: Section 116(a) deals not only with the May 26 agreement, but with any agreement.
- QUESTION: (c) With respect to the agreement referred to in the last sentence of section 116(a), wouldn't any alteration in the U.S. obligation to construct a road require some action by the Appropriations Committee to provide funds, and to the extent that Congress approves such use of funds in an appropriation act, wouldn't such an act meet the requirements of this sentence?
- ANSWER: Section 116(a) of H.J. Res. 175 says that an amendment to the subsidiary agreement regarding construction of the Babelthaup road must be approved by Congress. A new appropriation act implementing such an amendment would meet the requirements of section 116(a).
- QUESTION: (1) If so, isn't this sentence also meaningless?
- ANSWER: It is not meaningless because it has created a requirement for further congressional action.
- QUESTION 30. Give the Administration's position on earlier questions with respect to sections 103 and 107, isn't section 116(b) irrelevant?
- ANSWER: No. It serves to clarify the intent of Congress with respect to the agreements set forth in sections 103 and 107.
- QUESTION 31: Is there any need for any of Title I other than sections 102 and 117 other than the provisions of section 115(b) to the extent that the Compact goes

into effect prior to October 1, 1989 and the Administration can find \$28 million?

ANSWER: The contingency referred to in this question did not occur.

Questions on the Agreement

QUESTION 32. (a) Section 3(2) of House Bill No. 3-56-3, SD3, CDI of the OEK provides that any requirements in the Agreement for submission and review of any plan does not condition the U.S. obligation to provide funds on approval of such plans. Do you agree?

ANSWER: We do not. Palau cannot unilaterally create binding obligations on the United States.

QUESTION: (b) Does the requirement to provide funds in the Agreement require anything more than a good faith effort by the Administration to request and seek the appropriation of such funds?

ANSWER: No.

QUESTION: (1) If so, what are those obligations and the specific sums involved?

ANSWER: None.

QUESTION 33. Has Palau submitted any of the plans contemplated under the Agreement?

ANSWER: No.

QUESTION 34. What is the role of the Congress, and specifically the Appropriations Committees, in reviewing and approving any such plans?

ANSWER: The Administration intends to make the plans available to the appropriate committees of the Congress for views and comment.

QUESTION 35. Does the phrase "as authorized and provided by the laws of the United States," especially in Article II.3., contemplate future legislation, including both authorization and appropriation?

ANSWER: Yes, it does contemplate additional legislation, and authorization and appropriation as required.

QUESTION 36. (a) Please explain in detail precisely what Article VI of the Agreement does and specifically comment on the description included in the House record, the report to the Third OEK included in the House record, and the interpretation set forth in the OEK legislation referred to in question 1.

ANSWER: Article VI of the May 26, 1989 agreement states that Palau may request United States financial assistance in addition to that provided by the United States in the Compact, for any actual United States land use requirements in Palau which involve use of privately-owned land, exclusive of the Airai Airfield and Malakal Harbor sites specifically identified in paragraphs 1(a), 1(b), 2(a), and 2(b) of Tabs 1, 2 and 3 of Annex A of the Agreement Regarding the Military Use and Operating Rights of the Government of the United States in Palau concluded pursuant to Sections 321 and 322 of the Compact. If the United States should designate any such defense sites pursuant to Section 322(b) of the Compact and Palau request additional financial assistance, the Governments of the United States and Palau would enter into an appropriate agreement for such financial assistance, and such agreement would be subject on the United States side to congressional authorization and appropriation, if any additional funds are specified.

Although the May 26 Agreement states that Palau is not obligated to make available to the United States the use rights pertaining to such designate sites unless such an agreement has been approved as to such designated sites by the respective governments, if such an agreement has not been concluded and approved within a time period specified by the United States at the time of the initial designation, the matter may be resolved in accordance with the provisions of Title Three of the Compact.

Both the description included in the House Record, and the report to the Third OEK included in the House Record, fail to point out that while there may be some delay in concluding a specific agreement for such proposed defense sites, Palau remains obligated under section 322(b) of the Compact to make the designated site or an

acceptable alternate site available to the United States. The House Record and the above report to the OEK also fail to mention Palau's general obligation in section 313 of the Compact to refrain from actions determined by the United States, after consultation with Palau, to be incompatible with United States authority and responsibility for security and defense matters in or relating to Palau.

The interpretations set forth in the OEK legislation are those of the Government of Palau and the United States has no role to concur in and does not consider itself bound by, these definitions and interpretations contained in the OEK legislation.

QUESTION:

(b) In the absence of an agreement and approval, is Palau relieved of all obligations to provide defense sites?

ANSWER:

No. As stated above, Palau remains obligated under section 322(b) of the Compact to make the designated sites or an acceptable alternative available.

QUESTION:

(c) Does this agreement constitute an amendment of the Compact?

ANSWER:

The May 26 Subsidiary Agreement modifies the Compact but remains within the framework of section 110 of H.J. Res. 175.

QUESTION 37.

(a) With respect to Article VII, at what point must Palau assume responsibility for medical debts?

ANSWER:

Upon the effective date of the Compact.

QUESTION:

(b) What review is done to limit unneeded medical debts?

ANSWER:

Medical billings are reviewed by Interior before payment.

QUESTION:

(c) Doesn't Article VII constitute a virtual blank check to run up medical debts?

ANSWER:

Interior will verify all pre-Compact medical referral billings before they are paid. In the post-Compact period, Palau will be responsible for its own medical referral debts.

- QUESTION: (d) What is the authority to cancel both present and future medical obligations under Article VII.2.?
- ANSWER: Authority to cancel existing medial obligations is contained in P.L. 99-658. The Agreement does not cancel future obligations.
- QUESTION: (e) Is the intent of Article VII.2. to provide free medical treatment at United States facilities until the effective date of the Compact?
- ANSWER: Until the Compact with Palau comes into effect, and the Trusteeship with respect to Palau is terminated, the U.S. has a continuing responsibility to assist Palau in providing medical care in serious cases that cannot be handled at the Palau hospital. Whether or not cases must be referred to facilities outside Palau is essentially a medical judgment, but all such cases are reviewed by Interior prior to payment.
- QUESTION: (1) How do you plan to contain such expenditures?
- ANSWER: Work with the Government of Palau to ensure that off-island medical referrals are justified and limited to those cases of absolute medical necessity.
- QUESTION 38. Please comment specifically on the characterizations of the agreement contained in the report to the OEK and in the OEK legislation referred to in question 1.
- ANSWER: The characterizations are of interest to us, but they are not binding on the United States.
- QUESTION 39. The report to the OEK states that the U.S. estimates the economic cost of advancing funds for IPSECO to be between \$7 and \$8 million, yet the amount was set at \$3 million. Do you agree?
- ANSWER: The \$3 million amount was a negotiated figure, and, as such, is a compromise. Palauan negotiators believed the amount should be lower.

Questions regarding House Record

QUESTION 40. Does the Administration agree with the history of this legislation as set forth in the House Record?

ANSWER: No.

QUESTION 41. The explanation of the legislation in the House Record states that "the substitute would approve the May 26 Agreement, effectively making it a part of the Compact and this legislation" (H.3198). The legislation appears only to limit the President's ability to amend the Agreement. What is your position?

ANSWER: We concur in your position that it affects only the President's ability to amend the agreement.

QUESTION 42. (a) The explanation also states that "The administration assures that the agreement, which would become a part of the legislation under title II, will constitute an international legal obligation of the United States. It must be complied with if the United States is not to face challenge for a breach of Compact obligations." Is that correct?

ANSWER: It is correct in the sense that all agreements carry obligations. In this case, the Administration is obligated to seek the required appropriations.

QUESTION: (b) What are the specific legal obligations which require appropriation of funds?

ANSWER: None.

QUESTION: (c) What is the authority for the Executive Branch to enter into obligations involving the commitment of federal funds?

ANSWER: The Executive Branch may not enter into such obligations unless authorized or ratified by an Act of Congress, or conditioned on congressional ratification or appropriation.

QUESTION: (d) What in the Agreement commits the U.S. beyond the Administration requesting the appropriation of funds?

ANSWER: Nothing.

QUESTION 43. Would the Administration provide specific comments on the section by section analysis included in the House Record?

ANSWER: We would prefer not to attempt such comments.

QUESTION 44. Is the assertion correct on H. 3199 that Palau need not provide any military land requirements, other than Airai and Malakal, unless the U.S. enters into an agreement for financial assistance and that such assistance must be based on fair market value?

ANSWER: If the requirement serves a truly essential U.S. military purpose, Palau will be obligated to provide the land use associated with the Agreement on the basis of actual land use costs.

Palau may request United States financial assistance, in addition to that provided in Title II of the Compact, for any actual United States land use requirements in Palau which involved use of privately owned land, exclusive of the Airai airfield and Malakal harbor sites specifically identified in paragraphs 1(a), 1(b), 2(a) and 2(b) of Tabs 1, 2, and 3 of Annex A of the Agreement Regarding the Military Use and Operating Rights of the Government of the United States in Palau concluded pursuant to Sections 321 and 322 of the Compact. If Palau should make this request, the agreement of May 26, 1989, provides that the two governments shall enter into an appropriate agreement for such assistance. The May 26 agreement states that Palau is not obligated to make available to the United States the use rights pertaining to such designated sites unless a financial assistance agreement has been approved by the respective governments. If such an agreement has not been concluded and approved within a time period specified by the United States at the time of the initial designation, the matter may be resolved in accordance with the provisions of Title III of the Compact.

Any financial assistance provided to Palau in accordance with an assistance agreement is to be based upon independently verified land appraisals and land use costs.

Title III, section 351 of the Compact provides for a joint committee to consider disputes that may arise under the implementation of that Title and its related agreements. Hence, a dispute over the conclusion of such an assistance agreement could be referred to the joint committee and ultimately, if necessary, to the two governments. Under section 351, the Government of Palau is afforded an opportunity to raise its concerns with the Secretary of Defense personally during this process. Thus, while there may be some delay in concluding a specific assistance agreement for proposed defense sites, Palau remains obligated under section 322(b) of the Compact to make the designated defense site or an acceptable alternate site available to the United States.

Palau is also under a general obligation in section 313 of the Compact to refrain from actions determined by the United States after consultation with Palau to be incompatible with United States authority and responsibility for security and defense matters in or relating to Palau. Should Palau unreasonably refuse to make a designated defense site available, the United States would be entitled, pursuant to section 105(g)(2) of P.L. 99-239, to regard that refusal as a material breach of the Compact, and therefore to suspend its obligations to provide assistance. Section 105(g)(2) of P.L. 99-239, approving the Compact of Free Association with the Marshall Islands and the Federated States of Micronesia, was made applicable to Palau by section 104(g) of P.L. 99-658 of November 14, 1986, the statute giving initial United States approval to the Compact of Free Association with Palau.

QUESTION 45. On H. 3200, an assertion is made that the stationing of personnel is not subject to appropriations. Do you agree?

ANSWER: Under existing appropriations, Interior does not have available positions that could be utilized to fulfill the requirement of section 112 of H.J. Res. 175. Interior is considering available alternatives to resolve this problem. One alternative under consideration is a reorganization of OTIA.

QUESTION 46. A similar assertion is made with respect to \$200,000 for referendum costs. Do you agree and

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if so, what is the basis for the obligation of funds which have not been appropriated?

ANSWER: We have agreed that up to \$200,000 in referendum costs may be appropriated to Palau through existing appropriations for technical assistance, subject to submission by Palau of an acceptable plan for the use and expenditure of the funds.

QUESTION 47. (a) Do you agree with the characterization of Article VII of the Agreement as set forth on H. 3200?

ANSWER: We believe that H. 3200 fairly reflects the provisions of Article VII of the May 26, 1989 Agreement.

QUESTION: (b) The Agreement itself seems to require further legislation, including appropriations. Do you agree?

ANSWER: Yes.

QUESTION: (c) How does the Administration plan to implement Article VII, absent appropriations for such purposes?

ANSWER: No. See answer to question 18(f) on page 13.

QUESTION: (d) Does Article VII do anything more than commit the Administration to request necessary budget authority?

ANSWER: No.

QUESTION: 48. Is there authority to implement the Trade and Tariff section without specific legislation?

ANSWER: We would need legislation if it requires a change to U.S. law.

QUESTION 49. There is a statement on H. 3201 that "All United States financial assistance to Palau provided by the May 26 agreement would be authorized by the legislation. There does not appear to be a general authorization for all matters contained in the agreement, but rather a series of discrete authorizations for certain specific projects. What is your interpretation?

ANSWER: H.J. Res. 175 contains a series of discrete authorizations for specific projects. We believe, however, that these authorizations may be redundant since a general authorization for these purposes already exists under section 105(c) of P.L. 99-239, which is incorporated by reference into section 102(b) of P.L. 99-658. There is no general authorization, however, for items such as extension of federal programs, which may be the subject of future discussions and which would require both subsequent authorization and appropriation.

- QUESTION 50. The record on H. 3202 notes with respect to section 211 that the Virgin Islands has a serious drug abuse problem. What is the status of funds previously appropriated to the Virgin Islands for this purpose?
- ANSWER: This information will be provided under separate cover.
- QUESTION 51. (a) Does the Administration agree with the historical material included on pages H. 3203 to H. 3206?
- ANSWER: There are some statements that we can agree with, and many that we would question.
- QUESTION: (b) What specific descriptions do you disagree with?
- ANSWER: We would prefer not to characterize the descriptions contained in the House record.
- QUESTION: (c) Does the Administration agree that, other than with respect to Palau, the Trusteeship has terminated?
- ANSWER: Yes.
- QUESTION: (d) There is statement on H. 3203 that P.L. 99-658 was "a conditional approval of the compact." The legislation does not mention "conditional" but rather limits the ability to set an effective date. What is your opinion?
- ANSWER: Approval of the Compact was conditioned on (U.S.) Presidential certification of Palauan approval and in the absence of legal impediments as to the ability of the United States to carry out its responsibilities and exercise its rights under Title Three of the Compact.
- QUESTION: 52. H.J. Res. 175 requires the negotiation of several agreements:
- SECTION 103(b) -- Audits
 - SECTION 104(b) -- Anti-drug program
 - SECTION 105(a) -- Public Auditor and Prosecutor
 - SECTION 107 ----- Development Plan
 - SECTION 108 ----- Health Facilities
 - SECTION 111 ----- Prison Facilities
 - SECTION 115(b) -- Funding Advance

However, the May 26 Agreement includes agreements on each of these topics. Are these sections in H.J. Res. 175 still necessary?

ANSWER: Of the sections cited, only section 115(b) is essential to provide authority for altering the funding stream under Compact section 211(b). The other cited sections are not absolutely necessary, but do serve to clarify legislative intent with respect to these items.

QUESTION: 53. Several provisions of the May 26 Agreement indicate that the United States "shall provide" specific amounts of funding to Palau "as provided by the laws of the United States".

(a) What is the legal effect of this language-- does it require inclusion in the President's budget request -- in Congressional appropriations -- what is the legal effect if these funds are not appropriated?

ANSWER: The Agreement does not purport to make a binding commitment on Congress. Also, see answer to question 18(f) on page 13.

QUESTION: (b) Was it made clear to the Palauan representatives that the funding assistance set forth in the Agreement is subject to the appropriations process and is not a legally enforceable obligation?

ANSWER: The Government of Palau is well aware that this assistance is subject to the appropriations process.

QUESTION: (c) Would the enactment of Section 209, which references this Agreement, alter the legal effect of the Agreement, or the provisions of the solution?

ANSWER: Enactment of section 209 would prohibit the executive branch from amending the May 26 Agreement without Congressional action. It would not alter the legal effect of the Agreement or other provisions of this resolution.

QUESTION: 54. The May 26 Agreement also provides for several plans to be submitted by Palau.

(a) What are the obligations of the U.S. to consider additional financial assistance if Palau does not submit the plans as contemplated?

ANSWER: Should Palau fail to submit the plans specified in the Agreement, the U.S. would be justified in withholding additional funding until such time as Palau takes the requires action under the Agreement.

QUESTION: (b) What is the role of Congress in reviewing these plans, and what is the legal effect if Congress does not provide funding notwithstanding the submission of a plan?

ANSWER: The Administration will provide the plans to Congress for views and comment. Should funds not be appropriated, the Administration would be unable to carry out the terms of the Agreement, but Palau might invoke the dispute resolution procedures of the Compact as noted above.

QUESTION: 55. Section 209 of H.J. Res. 175 would add the May 26 Agreement to Section 101(c) of the Compact Act. Section 101 limits the ability of the executive branch to modify agreements without an act of Congress. However, the explanation of Section 209 in the House Record (Cong. Record H3198, H3201, June 27, 1989) indicates that its intent is to incorporate the terms of the Agreement into the Compact Act itself.

(a) Would the enactment of Section 209 alter the discretion of Congress regarding the additional financial assistance set forth in the Agreement, or would it merely limit the executive branch authority to modify the Agreement?

ANSWER: Section 209 would not alter the discretion of Congress but it would limit the authority of the Executive Branch to amend the Agreement.

QUESTION: 56. Article IV, Paragraph 4, of the May 26 Agreement purports to give the United States the ability to withhold funds under the Compact if Palau does not meet its obligations under Article IV.

(a) Do you believe that the Administration has the authority to withhold funds, an if so, which funds -- those under the Agreement -- under the Compact -- would this include full faith and credit funds?

ANSWER: The Administration would consider withholding funds only to correct performance of Palau to bring it into compliance with the Agreement or the

terms of the Compact. Funds subject to full faith and credit might be withheld in the event of a serious breach of the Compact by Palau, but Palau would have recourse to the dispute resolution and arbitration provisions of the Compact.

QUESTION: (b) Would the enactment of Section 209 alter those funds which could be withheld?

ANSWER: No. Section 209 would have no effect on the Administration's ability to withhold funds to correct performance.

QUESTION: 57. Would the enactment of Section 209 in any way enhance or alter, the legal effect of the May 26 Agreement other than limit the authority of the executive branch to modify the Agreement?

ANSWER: Section 209 would neither enhance or alter the legal effect of the May 26 Agreement, but would limit executive authority to modify it.

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